

FAQ: 2009 Oregon State Continuation Provisions

Updated April 30, 2010

Overview

On February 17, 2009, President Obama signed the “American Recovery and Reinvestment Act” (ARRA), which includes several provisions related to healthcare. In part, the Act creates new opportunities for individuals to qualify for continuation coverage provided by a group health plan. The Act also provides for a subsidy for that continuation coverage for some individuals and their family members.

On April 28, 2009, Governor Ted Kulongoski signed Oregon House Bill 2433 into law. The law grants the Oregon Insurance Division the authority to create a special election period for Oregon state continuation and to extend state continuation coverage to nine months. The Oregon Insurance Division filed emergency rules on April 28, 2009, which fulfilled the bill’s intent.

The continuation coverage provisions of ARRA have been amended three times, on December 19, 2009, when the President signed the “Department of Defense Appropriations Act, 2010,” on March 2, 2010, when the President signed the “Temporary Extension Act of 2010,” and on April 15, 2010 when the President signed the “Continuing Extension Act of 2010.”

The Oregon Insurance Division has adopted and amended emergency temporary rules extending the program for continuation of health benefit plans and eligibility for federal subsidy to coincide with the amendments to federal law.

The following FAQ was created to answer our customers’ questions about the continuation portion of these laws. This FAQ will be revised as necessary to answer additional questions or as the government issues guidance on these issues.

If you have a question that is not addressed here, please contact your PacificSource representative or consult your legal counsel.

General Questions

Q: *When is the federal law effective?*

A: February 17, 2009, when the President signed the American Recovery and Reinvestment Act. In most cases, the continuation subsidy will be effective March 1, 2009; under no circumstances is the subsidy effective prior to February 17, 2009. Amendments to ARRA due to the Department of Defense Appropriations Act, 2010 became effective on December 19, 2009. Amendments to ARRA due to the Temporary Extension Act of 2010 became effective March 2, 2010. Amendments to ARRA due to the Continuing Extension Act of 2010 became effective April 15, 2010.

Q: *When is the state law effective?*

A: April 28, 2009, when the Governor signed the bill. In most cases, the continuation subsidy will be effective March 1, 2009; under no circumstances is the subsidy effective prior to February 17, 2009.

Q: *Do changes in federal law affect the length of state continuation coverage?*

A: No. Federal law does not change the length of state continuation coverage. However, the emergency temporary rules adopted by the Oregon Insurance Division extend the maximum length for continuation coverage for an “assistance eligible individual” (or

“AEI”) to 15 months. The maximum length for continuation coverage under Oregon law for a non-assistance eligible individual is nine months.

Q: *How many months will individuals receive the subsidy?*

A: A maximum of 15 months, but there are limitations (see below).

Q: *What is the amount of the subsidy?*

A: Generally, 65% of the cost of the health insurance premium. Individuals electing continuation will be responsible for 35% of the total amount.

Q: *Who is entitled to reimbursement of the 65% subsidy?*

A: For plans subject to Oregon state continuation, the insurer providing the coverage under the plan is entitled to reimbursement.

Q: *What happens if the group health plan is terminated?*

A: The bill does not change the rules for this circumstance. If the group health plan is terminated and ceases to exist, then there are no continuation coverage rights.

Q: *What changes made to the subsidy as a result of the Department of Defense Appropriations Act, 2010 affect state continuation coverage?*

A: The following changes made to the subsidy program as a result of the Department of Defense Appropriations Act, 2010:

- The maximum period for the continuation premium reduction was extended from the original nine months to 15 months;
- The end date of eligibility for premium assistance was extended by two months, from the original end date of December 31, 2009 to February 28, 2010; and
- The requirement that continuation coverage must commence before the continuation premium reduction sunset date was eliminated. Eligibility for the continuation premium reduction will only be conditioned on the qualifying event occurring on or before the end date of eligibility for premium assistance, without regard to when the continuation coverage period begins (this clause overrides the prior eligibility position of the Department of Labor); however, your coverage must be continuous and continuation coverage commences the day after the end of your coverage as an active employee.

Q: *What changes made to the subsidy as a result of the emergency temporary rules adopted by the Oregon Insurance Division on December 22, 2009, and amended on January 8, 2010 affect state continuation coverage?*

A: The following changes made to state continuation coverage as a result of the emergency temporary rules, as amended:

- The maximum length for continuation coverage for an AEI was extended from the original nine months to 15 months;
- The new maximum length of continuation coverage for an AEI is measured from the first of the month following the qualifying event;
- “Assistance eligible individuals” (or “AEI’s”) who lost coverage upon failing to pay the full continuation premium after the original nine months of subsidized coverage expired have a second chance to pay the premium (at the 35% reduced rate) so as to retroactively restore their coverage under the plan. Insurers must allow the AEI to pay the premium by February 17, 2010 or, if later, within 30 days after the notice of restoration rights is provided;
- An AEI who exhausted the original nine months of subsidized coverage but retained coverage under the plan by paying the full continuation premium must receive a refund or a credit towards future continuation premiums for the overpayment (*Note: Since the original length of continuation coverage and the subsidy were both nine months, it is highly unlikely an individual would have been able to pay the entire premium for continuation since coverage expired at the same time as the subsidy.*); and

- New notification requirements for insurers were created to notify AEI of changes made by the Department of Defense Appropriations Act, 2010, and the emergency temporary rules adopted by the Oregon Insurance Division;

Q: *What changes were made to the subsidy as a result of the Temporary Extension Act of 2010?*

A: The following changes were made to the subsidy program as of result of the Temporary Extension Act of 2010:

- The end date of eligibility for premium assistance was extended by one additional month, from February 28, 2010 to March 31, 2010;
- A new special election period was created for individuals who experienced a reduction in hours between September 1, 2008 and the end date of eligibility for premium assistance (currently May 31, 2010) followed by an involuntary termination of employment that occurred between March 2, 2010 and the end date of eligibility for premium assistance (currently May 31, 2010);
- A new notification requirement for employers was created to notify individuals who experienced a reduction in hours followed by an involuntary termination of employment about the new special election period created under the Temporary Extension Act of 2010;
- Statutory language had been added allowing employers to determine whether the individual had a qualifying event of involuntary termination of employment and requiring record keeping of such determinations; and
- A new civil right of action is established allowing the appropriate federal regulatory agency to enforce the continue coverage subsidy provisions.

Q: *What changes were made to state continuation as a result of the amended temporary rules filed by the Oregon Insurance Division on March 10, 2010?*

A: The amended temporary rules filed on March 10, 2010 adopted the following changes made to the subsidy as a result of the Temporary Extension Act of 2010:

- The end date of eligibility for premium assistance was extended by one additional month, from February 28, 2010 to March 31, 2010;
- A new special election period was created for individuals who experienced a reduction in hours between September 1, 2008 and the end date of eligibility for premium assistance (currently May 31, 2010) followed by an involuntary termination of employment that occurred between March 2, 2010 and the end date of eligibility for premium assistance (currently May 31, 2010);

The amended temporary rules also created a new notification requirement for insurers to notify individuals who experienced a reduction in hours followed by an involuntary termination of employment about the new special election period created under the Temporary Extension Act of 2010.

Q: *What changes were made to the subsidy as a result of the Continuing Extension Act of 2010?*

A: The following changes were made to the subsidy program as of result of the Continuing Extension Act of 2010:

- The end date of eligibility for premium assistance was extended by two additional months, from March 31, 2010 to May 31, 2010.

Q: *What changes were made to state continuation as a result of the amended temporary rules filed by the Oregon Insurance Division on April 26, 2010?*

A: The amended temporary rules filed on April 26, 2010 adopted the following changes made to the subsidy as a result of the Continuing Extension Act of 2010:

- The end date of eligibility for premium assistance was extended by two additional months, from March 31, 2010 to May 31, 2010.

Q: Where can people find more information about the federal and Oregon bills, the subsidy, and how it works?

A: Additional information is located on the [Department of Labor's Web site](#), the [Internal Revenue Service's Web site](#), the [Department of Health and Human Services' Web site](#), [Recovery.gov](#), the [Oregon state legislature's Web site](#), and the [Oregon Insurance Division's Web site](#). The IRS guidance (released March 31, 2009) has a number of examples and explanations; we encourage everyone to review that document for helpful information, as we have not replicated that information in these FAQs. This guidance also contemplates that additional guidance may be released; we will continue to monitor for such releases and will update these FAQs as appropriate.

How the Law Affects Individuals

Q: How long do former employees have to elect state continuation coverage once they have received notice?

A. They have 31 days from receipt of the notification about state continuation coverage.

Q: Who is eligible for the subsidy?

A: To be an "assistance eligible individual" (or "AEI"), an individual must:

- be a "qualified beneficiary" who is eligible for continuation coverage related to a qualifying event occurring from September 1, 2008 through May 31, 2010;
- elect continuation coverage; and
- become eligible for continuation (i.e., "qualifying event") due to the involuntary termination of the covered employee's employment from September 1, 2008 through May 31, 2010.

Note: There is an income maximum that will disqualify some individuals from receiving the subsidy; however, insurers are required to pay the subsidy and the individuals will work with the IRS in terms of their tax return, etc.

Example A: Dan was involuntarily terminated from his employment on September 18, 2008, and became eligible for continuation coverage on October 1, 2008. He did not elect and maintain continuation coverage. Dan now will have a second opportunity to elect coverage. His new coverage will be effective March 1, 2009, and the subsidy will be available until December 31, 2009, when his continuation coverage expires. Dan's qualifying event remains September 18, 2008, and his 15 months of continuation coverage are measured from October 1, 2008.

Example B: Pam was involuntarily terminated from her employment on August 31, 2008, and became eligible for continuation coverage on September 1, 2008. Pam is not an AEI, is not eligible for the special election, and is not eligible for the subsidy.

Example C: Mike is involuntarily terminated from his employment on May 10, 2010. He remains covered under the group plan through May 31, 2010, as part of his coverage as an active employee. He becomes eligible for continuation coverage on June 1, 2010. Mike is an AEI and is eligible for the subsidy for up to 15 months.

Q: How does someone apply for the premium reduction for state continuation coverage?

A. The process is as follows:

- The insurer is required to send a notice to each former employee who was involuntarily terminated from employment and became eligible for state continuation coverage between September 1, 2008 and May 31, 2010. The notice will outline who is eligible for the subsidy, as not everyone who receives a new notice will necessarily be eligible (see above for the eligibility criteria), and will include the forms necessary for enrollment.
- Each former employee must have the former employer complete the appropriate section of the enrollment forms.

- Either the former employee or employer must return the State Continuation Coverage Election Form, Request for Treatment as an Assistance Eligible Individual Form, and applicable premium to PacificSource.
- Individuals may also contact their former employers to ask about taking advantage of the subsidy.

Q: Are family members eligible for the subsidy?

A: Yes, if the former employee meets the qualifications for the subsidy, then all family members who are “qualified beneficiaries” are eligible as well. Domestic partners are not “qualified beneficiaries,” so the subsidy will not be available for those individuals. The subsidy is only available for AEIs.

Example A: Dan is an AEI under the Act and is paying the reduced 35% premium. While receiving the subsidy, Dan marries Susan. Susan may enroll on the plan with Dan, but is not a qualified beneficiary and, as such, is not eligible for the premium subsidy. The premium subsidy will only be provided for the premium associated with Dan’s coverage. If the employee only portion is \$350 and the employee plus spouse is \$600, then Dan pays \$372.50 (35% of \$350 plus \$250 for the incremental increase in the total premium associated with covering Susan).

Example B: Pam is an AEI and Jack, her domestic partner, and their two children were all covered on the plan at the time of her involuntary termination from employment. Pam and the two children are qualified beneficiaries, but Jack is not. As such, the subsidy is available for Pam and the children only. If the employee plus two dependents premium is \$1,000 and there is no additional charge for covering an additional dependent (Jack), then Pam pays \$350 (35% of \$1,000). If the premium for employee plus three dependents was \$1,200, then Pam would pay \$550 (35% of \$1,000 plus \$200 for the incremental increase in the total premium associated with covering Jack).

Q: When does the individual’s eligibility for the subsidy end?

A: The earlier of:

1. the first date that the assistance eligible individual (“AEI”) is eligible for coverage under any other group health plan or Medicare coverage (note that it ends based on *eligibility* and not on *enrollment* in the other group plan or Medicare coverage);
2. fifteen months from the date the subsidy began;
3. the date on which the AEI’s continuation coverage period expires; or
4. the date on which the AEI no longer pays the 35% portion of the premium.

Q: Is an individual eligible for up to 15 months of subsidy (up to six additional months) if they used up their entire nine months of subsidy prior to the maximum length of the subsidy being extended to 15 months as a result of the Department of Defense Appropriations Act, 2010?

A: Yes, an AEI would be eligible for up to 15 months of the subsidy, even if the AEI’s original subsidy of nine months already expired. The AEI would be able to maintain continuation coverage if the AEI pays the 35% share of the premium retroactively by February 17, 2010 (or, if later, 30 days after the date of notification of the extension of the subsidy). Continuation coverage will be retroactively reinstated back to the date the AEI’s continuation coverage originally expired.

Example: Pam was involuntarily terminated from her employment on February 15, 2009 and started continuation coverage on March 1, 2009. Pam’s original nine months of continuation coverage and subsidy expired on November 30, 2009. On January 5, 2010, Pam’s former insurer sends her notification of the extension of the subsidy. If Pam pays her 35% share of December’s, January’s, and February’s premium before February 17, 2010, Pam’s continuation coverage would be retroactively reinstated on December 1, 2009.

- Q: How is the individual's state continuation eligibility period measured?**
A: Generally, from the original qualifying event. For example, if John was laid off September 18, 2008, that is his qualifying event and his 15 month eligibility period (assuming no other facts) will be measured starting from October 1, 2008.
- Q: What if an AEI becomes eligible for coverage under another group health plan, but fails to notify the group health plan providing the subsidized coverage and remains on the subsidized plan?**
A: Individuals will be subject to penalties of 110% of the subsidy amount provided during the time they were eligible for other coverage but remained on the subsidized coverage.
- Q: If an AEI elects continuation coverage effective March 1, 2009, but the qualifying event was the previous September, and the AEI did not elect continuation coverage at that time, what happens to pre-existing conditions given the gap in coverage?**
A: The time period beginning on the date of the qualifying event and ending with the day before the enactment of this law will be disregarded for purposes of determining the HIPAA 63-day break in coverage.
- Q: What about dependents who lose coverage when they age out of the plan? Are they eligible for a subsidy?**
A: No; the subsidy is only available when the employee is involuntarily terminated from employment.
- Q: What if the individual elected continuation coverage and was then termed for non-payment prior to the enactment of this law. Is the individual eligible to re-elect continuation coverage and receive the subsidy?**
A: Yes, if continuation is re-elected under the special notice provided by Oregon state law.
- Q: What happens if an AEI paid the entire premium for March 2009 or April 2009?**
A: The recipient of the premium – whether the employer or the insurer – must either:
- reimburse the AEI for amounts in excess of the 35% share of the premium; or
 - provide credit to the AEI for the excess amount in a way that reduces the AEI's subsequent premium payments, if it's reasonable to believe the excess will be consumed within 180 days.
- Q: Is the subsidy considered taxable income to the AEI?**
A: No.
- Q: May individuals enrolled in continuation coverage change their coverage options?**
A: Yes, under certain circumstances. If the employer offers multiple continuation coverage options, and the plan allows for changes mid-year, it may allow individuals a one-time opportunity to change to a different continuation coverage option prior to the annual open enrollment period if the following conditions are met:
- the individual qualifies for the subsidy;
 - the premium for the new coverage does not exceed the premium for coverage in which the individual was enrolled;
 - the different coverage option is also offered to the active employees; and
 - the different coverage is not dental, vision, counseling and/or referral services; coverage under a health FSA; or coverage for services or treatments furnished at an on-site medical facility maintained by the employer.
- Q: What happens if a potential AEI is denied the subsidy or the special election right?**
A: The individual may appeal the decision that he/she is not eligible for the subsidy or for the right to elect continuation coverage during the special election notice period. The appeal will be handled by the [U.S. Department of Health and Human Services](#). The agency is required to make a decision within 15 business days after the application for review is submitted.

Q: Can an AEI still receive the full 15 months of subsidy after May 31, 2010 if the AEI was involuntarily terminated no later than March 31, 2010 and became eligible for continuation due to a qualifying event that occurred no later than May 31, 2010?

A: Yes, AEI's are entitled to receive up to 15 months of subsidy for state continuation coverage as long as they remain eligible as an AEI.

Example: Sally was involuntarily terminated from her employment on October 15, 2009 and started continuation coverage on November 1, 2009. Sally would be entitled to 15 months of premium assistance from November 1, 2009 through January 31, 2011 as long as she remains eligible as an AEI.

Q: How does the new special election period created by the amended temporary rules filed on March 10, 2010 work?

A: If an individual experienced a reduction in hours at some point between September 1, 2008 and May 31, 2010, followed by an involuntary termination of employment occurring at some point between March 2, 2010 and May 31, 2010, the individual has a second state continuation election opportunity at the time of the involuntary termination of employment, as long as the individual meets the qualifications of an AEI (see above). This second election opportunity applies regardless if the individual did not elect state continuation when the individual first became eligible due to a reduction in hours or the individual elected state continuation when first eligible due to a reduction in hours and later discontinued the coverage. Coverage and subsidy due to the second election opportunity begins for the individual when the involuntary termination of employment occurs. The individual's maximum duration of state continuation coverage is measured from the individual's original qualifying event of reduction in hours.

Example: Mike had his hours reduced on October 15, 2009 and lost coverage on October 31, 2009, but he did not elect state continuation. On March 15, 2010, Mike experiences an involuntary termination of employment. Mike now has the opportunity to elect state continuation coverage and receive the subsidy due to the involuntary termination of employment. Mike's coverage and subsidy begins on April 1, 2010. Mike's state continuation coverage would expire April 30, 2011 (15 months from the original qualifying event of reduction in hours).

Q: If an AEI elects state continuation due to the new special enrollment period created by the amended temporary rules filed on March 10, 2010, but had a gap in coverage between the AEI's reduction in hours and the AEI's involuntary termination of employment, what happens to pre-existing conditions given the gap in coverage?

A: The time period beginning on the date of the original qualifying event (reduction in hours) and second qualifying event (involuntary termination of employment) will be disregarded for purposes of determining the HIPAA 63-day break in coverage.

How the Law Affects Employers

Q: When are insurers required to notify former employees of the subsidy for state continuation coverage, as a result of House Bill 2433?

A: For individuals who experienced a loss of coverage due to involuntary termination of employment between September 1, 2008 and May 31, 2010, within ten days following the date of administrative action taken by the insurer to initiate or document the loss of coverage.

For individuals who experienced a reduction in hours between September 1, 2008 and May 31, 2010 followed by an involuntary termination of employment that occurred between March 2, 2010 and May 31, 2010, within ten days of involuntary termination of employment.

Q: Does PacificSource publish its own model notices for this purpose?

Yes, we have developed a notice for state continuation coverage with the content required by the Oregon Insurance Division. We will issue the notice to employees who terminate coverage under your plan from September 1, 2008 through May 31, 2010. The notice is available on the For Administrators area of our Web site, and you are welcome to download and distribute them yourself should you receive questions or requests from former employees.

Q: Who must be sent the notices, as a result of House Bill 2433?

A: All employees who left employment from September 1, 2008 onward if they are eligible for continuation—even if they will not qualify for the subsidy. However, as a practical matter, insurers will not know which employees were involuntarily terminated versus those who lost coverage for other reasons, so the notices will be sent to a broader group of employees than just those who actually qualify for the subsidy.

Q: What happens if the employer pays the entire premium on behalf of the former employee?

A: The Act does not apply and the employer cannot deduct any amount paid from the company's payroll taxes.

Q: What is meant by "involuntary termination of employment"?

A: Neither the federal nor state law defines this term. The [Internal Revenue Service guidance](#) include the following definition for "involuntary termination:"

"An involuntary termination means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. An involuntary termination may include the employer's failure to renew a contract at the time the contract expires, if the employee was willing and able to execute a new contract providing terms and conditions similar to those in the expiring contract and to continue providing the services. In addition, an employee-initiated termination from employment constitutes an involuntary termination from employment for purposes of the premium reduction if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship for the employee." The IRS's guidance provides several examples of how this definition is interpreted; we recommend that you review the examples.

This FAQ document is intended to provide our customers with general information regarding the American Recovery and Reinvestment Act, as amended. This document does not constitute legal or compliance advice, and you should consult your own legal counsel for specific guidance.

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