

CHAPTER 377

INSURANCE

HOUSE BILL 09-1349

BY REPRESENTATIVE(S) Fischer, Apuan, Frangas, Hullinghorst, Merrifield, Pace, Priola, Ryden, Schafer S., Todd, Vigil, Court, Labuda;
also SENATOR(S) Heath, Boyd, Foster, Gibbs, Newell, Schwartz, Shaffer B., Tochtrop, Williams.

AN ACT**CONCERNING A SPECIAL ELECTION PERIOD FOR THE CONTINUATION OF HEALTH CARE COVERAGE AFTER INVOLUNTARY TERMINATION FROM EMPLOYMENT.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-108.3. Continuation privileges - special election period - notice requirements - definitions - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ASSISTANCE-ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO:

(I) AT ANY TIME DURING THE PERIOD THAT BEGINS SEPTEMBER 1, 2008, AND ENDS FEBRUARY 16, 2009, WAS ELIGIBLE FOR CONTINUATION COVERAGE PURSUANT TO SECTION 10-16-108 (1) (d) (XVII) (C) OR (2) (b) (I) (C);

(II) EXPERIENCED A QUALIFYING EVENT; AND

(III) IS NOT ELIGIBLE FOR COVERAGE UNDER ANOTHER GROUP HEALTH PLAN OR THE FEDERAL MEDICARE PROGRAM.

(b) "DIVISION" MEANS THE DIVISION OF INSURANCE.

(c) "EMPLOYER" MEANS:

(I) ANY SMALL EMPLOYER THAT EMPLOYED AT LEAST TWO BUT NOT MORE THAN

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

NINETEEN ELIGIBLE EMPLOYEES ON AT LEAST FIFTY PERCENT OF ITS WORKING DAYS DURING THE PRECEDING CALENDAR YEAR, OR, IF THE EMPLOYER WAS NOT IN BUSINESS DURING ANY PART OF THE PRECEDING CALENDAR YEAR, EMPLOYED AT LEAST TWO BUT NOT MORE THAN NINETEEN ELIGIBLE EMPLOYEES ON AT LEAST FIFTY PERCENT OF ITS WORKING DAYS DURING THE PRECEDING CALENDAR QUARTER; OR

(II) AN EMPLOYER WITH TWENTY OR MORE ELIGIBLE EMPLOYEES ON AT LEAST FIFTY PERCENT OF ITS WORKING DAYS DURING THE PRECEDING CALENDAR YEAR, OR, IF THE EMPLOYER WAS NOT IN BUSINESS DURING ANY PART OF THE PRECEDING CALENDAR YEAR, EMPLOYED TWENTY OR MORE ELIGIBLE EMPLOYEES ON AT LEAST FIFTY PERCENT OF ITS WORKING DAYS DURING THE PRECEDING CALENDAR QUARTER.

(d) "QUALIFIED BENEFICIARY" MEANS AN ASSISTANCE-ELIGIBLE INDIVIDUAL WHO WAS ELIGIBLE FOR CONTINUATION COVERAGE AS A RESULT OF THE INVOLUNTARY TERMINATION OF THE COVERED EMPLOYEE'S EMPLOYMENT DURING THE PERIOD THAT BEGINS SEPTEMBER 1, 2008, AND ENDS FEBRUARY 16, 2009, AND WHO:

(I) WAS COVERED UNDER THE EMPLOYER'S GROUP HEALTH PLAN WHEN THE QUALIFYING EVENT OCCURRED; AND

(II) WOULD BE ELIGIBLE FOR CONTINUATION COVERAGE PURSUANT TO SECTION 10-16-108 (1) (d) (XVII) (C) OR (2) (b) (I) (C) AND NOT ELIGIBLE FOR CONTINUATION COVERAGE UNDER THE FEDERAL "CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985", PUB.L. 99-272, AS AMENDED.

(e) "QUALIFYING EVENT" MEANS AN INVOLUNTARY TERMINATION FROM EMPLOYMENT BY THE EMPLOYER OF AN EMPLOYEE AND DOES NOT INCLUDE:

(I) DEATH OF THE EMPLOYEE;

(II) DIVORCE OR LEGAL SEPARATION FROM THE EMPLOYEE; OR

(III) THE LOSS OF DEPENDENT STATUS BY A DEPENDENT ENROLLED IN THE GROUP HEALTH PLAN.

(2) A QUALIFIED BENEFICIARY WHO DOES NOT HAVE AN ELECTION OF CONTINUATION COVERAGE AS DESCRIBED IN SECTION 10-16-108 (1) (b) OR (2) (a) IN EFFECT ON FEBRUARY 17, 2009, BUT WHO WOULD BE AN ASSISTANCE-ELIGIBLE INDIVIDUAL IF SUCH ELECTION WERE IN EFFECT, MAY ELECT CONTINUATION COVERAGE PURSUANT TO THIS SECTION.

(3) A QUALIFIED BENEFICIARY MAY ELECT CONTINUATION COVERAGE AS PROVIDED BY THIS SECTION NO LATER THAN SIXTY DAYS AFTER THE DATE OF THE NOTICE DESCRIBED IN SUBSECTION (5) OF THIS SECTION.

(4) THE EFFECTIVE DATE OF COVERAGE PURSUANT TO THIS SECTION SHALL BE THE FIRST DAY OF THE MONTH FOLLOWING THE ELECTION OF COVERAGE.

(5) (a) AN EMPLOYER SHALL PROVIDE TO A QUALIFIED BENEFICIARY WHO HAD A QUALIFYING EVENT DURING THE PERIOD BEGINNING ON SEPTEMBER 1, 2008, AND ENDING ON FEBRUARY 16, 2009, A WRITTEN NOTICE CONTAINING INFORMATION THAT

ADEQUATELY INFORMS THE QUALIFIED BENEFICIARY ABOUT THE NEW OPPORTUNITY TO ELECT CONTINUATION COVERAGE WITH A SIXTY-FIVE PERCENT PREMIUM SUBSIDY IF THE QUALIFIED BENEFICIARY MEETS THE DEFINITION OF AN ASSISTANCE-ELIGIBLE INDIVIDUAL. THE NOTICE SHALL INCLUDE:

(I) THE AMOUNT OF THE PREMIUM A QUALIFIED BENEFICIARY WILL PAY IF CONTINUATION COVERAGE IS ELECTED. IF THE EMPLOYER IS UNABLE TO PROVIDE THE CORRECT PREMIUM AMOUNT IN THE NOTICE, THE NOTICE MAY CONTAIN THE LAST-KNOWN PREMIUM AMOUNT AND AN OPPORTUNITY FOR THE QUALIFIED BENEFICIARY TO REQUEST, THROUGH A TOLL-FREE TELEPHONE NUMBER SUPPLIED BY THE CARRIER PROVIDING THE EMPLOYER'S CURRENT GROUP HEALTH PLAN, THE CORRECT PREMIUM THAT WOULD APPLY TO THE QUALIFIED BENEFICIARY.

(II) ENROLLMENT FORMS AND THE INFORMATION REQUIRED TO BE PROVIDED BY SECTION 10-16-108 (1) (e) (II) OR (2) (c) (II) TO ALLOW THE QUALIFIED BENEFICIARY TO ELECT CONTINUATION COVERAGE;

(III) THE ELIGIBILITY REQUIREMENTS FOR PREMIUM ASSISTANCE IN THE AMOUNT OF SIXTY-FIVE PERCENT OF THE PREMIUM PURSUANT TO SECTION 3001 (a) OF TITLE III, DIVISION B, OF THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009", PUB.L. 111-5, AS AMENDED;

(IV) THE DURATION OF THE PREMIUM ASSISTANCE AVAILABLE UNDER SECTION 3001 (a) OF TITLE III, DIVISION B, OF THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009", AS AMENDED;

(V) A DESCRIPTION OF THE REQUIREMENT THAT THE ASSISTANCE-ELIGIBLE INDIVIDUAL NOTIFY THE CARRIER WHEN HE OR SHE BECOMES ELIGIBLE FOR COVERAGE UNDER ANOTHER GROUP HEALTH PLAN OR THE FEDERAL MEDICARE PROGRAM AND THE PENALTY FOR FAILING TO DO SO;

(VI) A STATEMENT THAT A QUALIFIED BENEFICIARY MAY ELECT CONTINUATION COVERAGE NO LATER THAN SIXTY DAYS AFTER THE DATE OF THE NOTICE;

(VII) A STATEMENT THAT THE EFFECTIVE DATE OF THE CONTINUATION COVERAGE SHALL BEGIN ON THE FIRST DAY OF THE MONTH FOLLOWING THE ELECTION;

(VIII) THE DATE THAT THE CONTINUATION COVERAGE WILL END BASED ON THE PERIOD OF CONTINUATION COVERAGE THAT WOULD HAVE BEEN REQUIRED IF THE COVERAGE HAD INSTEAD BEEN ORIGINALLY ELECTED PURSUANT TO SECTION 10-16-108 (1) (e) (I) OR (2) (c) (I); AND

(IX) A STATEMENT THAT A QUALIFIED BENEFICIARY WHO HAD PREVIOUSLY REJECTED OR DISCONTINUED CONTINUATION COVERAGE HAS THE RIGHT TO WITHDRAW THAT REJECTION AND ELECT CONTINUATION COVERAGE WITH OR WITHOUT THE PREMIUM ASSISTANCE.

(b) THE NOTICE SHALL BE MAILED TO THE EMPLOYEE'S LAST-KNOWN ADDRESS OR PROVIDED ELECTRONICALLY, IF SUCH METHOD OF COMMUNICATION HAD BEEN PREVIOUSLY DESIGNATED BY THE EMPLOYEE, WITHIN TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(c) FOR PURPOSES OF COMPLIANCE WITH THE NOTICE REQUIREMENTS OF THIS SECTION, THE DIVISION MAY DESIGNATE A MODEL NOTICE THAT MAY BE USED BY EMPLOYERS.

(6) CONTINUATION COVERAGE ELECTED PURSUANT TO SUBSECTION (5) OF THIS SECTION SHALL NOT EXTEND BEYOND THE PERIOD OF CONTINUATION COVERAGE THAT WOULD HAVE BEEN REQUIRED IF THE COVERAGE HAD INSTEAD BEEN ELECTED PURSUANT TO SECTION 10-16-108 (1) (e) (I) OR (2) (c) (I).

(7) WITH RESPECT TO AN ASSISTANCE-ELIGIBLE INDIVIDUAL WHO ELECTS CONTINUATION COVERAGE PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE PERIOD BEGINNING ON THE DATE OF THE QUALIFYING EVENT AND ENDING ON THE DATE OF THE FIRST PERIOD OF COVERAGE ON OR AFTER FEBRUARY 17, 2009, SHALL BE DISREGARDED FOR PURPOSES OF DETERMINING THE SIXTY-THREE-DAY PERIOD REFERRED TO IN SECTION 10-16-105.5.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A QUALIFIED BENEFICIARY ELIGIBLE FOR PREMIUM ASSISTANCE UNDER SECTION 3001 OF TITLE III, DIVISION B, OF THE FEDERAL "AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009", AS AMENDED, MAY AT THE OPTION OF THE EMPLOYER, BE ALLOWED TO ELECT TO ENROLL IN DIFFERENT COVERAGE SUBJECT TO THE CRITERIA PROVIDED UNDER SECTION 3001 (a) (1) (B) OF SUCH FEDERAL ACT.

(9) THE CARRIER THAT PROVIDES THE EMPLOYER'S CURRENT GROUP HEALTH PLAN SHALL PROVIDE THE EMPLOYER WITH ALL INFORMATION NECESSARY TO FULFILL THE NOTIFICATION REQUIREMENTS OF THIS SECTION.

(10) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2010.

SECTION 2. 10-16-105.5 (2), Colorado Revised Statutes, is amended to read:

10-16-105.5. Individual health plans - federally eligible individual - limited guarantee issue. (2) CoverColorado is hereby designated the state alternative mechanism for health care coverage of federally eligible individuals, in accordance with the federal "Health Insurance Portability and Accountability Act of 1996". On and after July 1, 2001, every carrier offering individual health benefit plans in Colorado shall promptly provide written notice pursuant to section 10-8-521 to all federally eligible individuals who apply for individual health benefit plan coverage. CoverColorado shall accept for enrollment every federally eligible individual who applies for coverage within ~~sixty-two~~ SIXTY-THREE days after termination of such individual's prior coverage and shall not impose any preexisting condition exclusions or limitations on the new coverage. The health care coverage offered by CoverColorado shall be comprehensive coverage, with benefits substantially the same as those otherwise offered to individuals eligible for CoverColorado. The premiums charged by CoverColorado shall be the same as the premiums otherwise charged to individuals eligible for CoverColorado and shall be subject to the limits set forth in section 10-8-512 (3).

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2009