

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

2011 JUN -8 PM 3:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §33-2-10

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

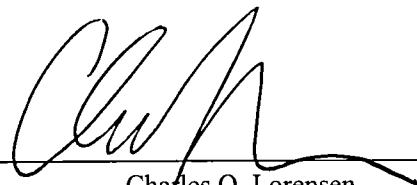
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 93

TITLE OF RULE BEING PROPOSED: Mini COBRA

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 8, 2011 AT 5:00 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P. O. Box 50540
Charleston WV 25305-0540
Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Department of Revenue
Agency Questionnaire

Re: Legislative Rule to be Filed

TITLE 114, SERIES 93
Mini COBRA

Question 1: Are regulations required?

Regulations are not required.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

Possibly, although the rule mirrors federal COBRA and is intended to give guidance to insurers as to their duties under state law.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

Custom drafted, although it borrows from other states with similar mini-COBRA laws.

Question 4: What are the really important things you think the Secretary of the Department of Revenue should know about this rule and the issues that surround it?

State mini-COBRA (WVC 33-16-1a(e)) only applies to persons involuntarily "laid off"; the proposed rule defines this to mean persons terminated as well and, like its federal counterpart, excludes those who would be excluded from unemployment benefits if the termination was for gross misconduct (federal COBRA extends to many more situations, such as the death of the employee or a divorce). The rule does impose notice requirement on insurers, but it also provides the opportunity for keeping the former employee's business (albeit with no employer contributions) if he or she is able to pay the full premium). The insurers should welcome some guidance where there has been none (inasmuch as the underlying state statute, unlike federal COBRA, does not impose any duties on the employer, the rule does likewise and only speaks to insurer duties).

West Virginia Insurance Commissioner
Legislative Rule
Title 114, Series 93

MINI-COBRA

TITLE 114, SERIES 93

BRIEF SUMMARY OF RULE

This new rule would establish various requirements for an insurer to offer, and a "qualified beneficiary" to elect and receive, continuation coverage benefits after a covered employee with employer-sponsored health insurance coverage has been terminated from his or her job. It provides that only plans not covered by the federal COBRA law -- employer plans with 20 or more employees -- would be covered by this rule. It sets out notice requirements, the effects of an election to continue coverage and the coverage situation in the event of insurer noncompliance (coverage continues automatically until notice requirements are followed).

Insurance Commissioner
Legislative Rule
Title 114, Series 93

MINI COBRA

TITLE 114, SERIES 93

STATEMENT OF CIRCUMSTANCES

Federal COBRA provides that employers (20+ employees) must offer to continue certain former employees and their dependents on a group health insurance plan for 18 months as long as the employee pays 102% of the premium. Because the federal law does not cover plans sponsored by employers with fewer than 20 employees, states such as West Virginia enacted "mini-COBRA" laws to cover this gap. These mini-COBRA laws differ greatly; West Virginia's simply requires every insurer to include a policy provision in every person eligible for coverage under an employer sponsored plan will be permitted to receive continued coverage under that plan at the same rates (without the employer's contribution) for 18 months "when they are involuntarily laid off from work." Employers and carriers frequently contact the Offices of the Insurance Commissioner ("OIC") about their responsibilities when a covered employee is laid off, and OIC recommends following the analogous COBRA rules to the extent they can be used, e.g. when and to whom to give notice of the right to elect such coverage. This rule is intended to clarify the various election and notice rules expressly applicable to mini-COBRA.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Mini COBRA (Title 114, Series 93)

Type of Rule: X Legislative Interpretive Procedural

Agency: WV Offices of the Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact on costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
N/A			
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Equipment	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

N/A

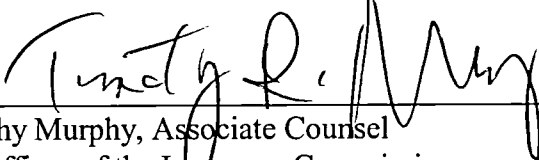
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Rule simply clarifies the process carriers must follow in offering continuation coverage to laid off employees of small employers, possible small impact on the carriers in carrying out the notice requirements.

Date: 6-8-11

Signature of Agency Head or Authorized Representative



Timothy Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
304-558-6279 x1210
Timothy.murphy@wvinsurance.gov

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 93
MINI-COBRA**

Sections

- 114-93-1. General.
- 114-93-2. Definitions.
- 114-93-3. Continuation of Coverage under Health Benefit Plan.

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 93
MINI-COBRA**

FILED
2011 JUN -8 PH 3: 10
OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

§114-93-1. General.

1.1. Scope. -- This rule provides guidelines with respect to the continuation of health insurance coverage for former employees of certain small employers, their dependents and other qualified beneficiaries who are not entitled to such coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

This rule does not apply if continuation of coverage benefits are available to covered employees or other qualified beneficiaries pursuant to a 'COBRA continuation provision,' as that term is defined in W. Va. Code §33-16-3m(a)(1)(A).

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§114-93-2. Definitions.

2.1. "Applicable premium" means, with respect to any period of continuation of coverage for qualified beneficiaries, the premium charged by the health benefit plan for such period of coverage for beneficiaries with respect to whom a qualifying event has not occurred, regardless of whether such premium or portions thereof are paid by the employer or employee.

2.2. "Carrier" means an insurer licensed in this state to transact accident and sickness insurance that has issued a health benefit plan.

2.3. "Commissioner" means the West Virginia Insurance Commissioner.

2.4. "Continuation coverage" means coverage under the health benefit plan that meets the requirements of section 3 of this rule.

2.5. "Covered employee" means an employee of a small employer who is covered under a health benefit plan by virtue of the employee's employment.

2.6. "Health benefit plan" means any group accident and sickness policy issued to a small employer that provides coverage for the employer's employees (including continuation coverage provided in accordance with this rule) and their dependents.

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2.7. "Qualified beneficiary" means any individual who, on the day of the qualifying event for the covered employee, was covered under the health benefit plan by virtue of the individual being the covered employee, his or her spouse, or a dependent of the covered employee.

2.8. "Qualifying event" means the involuntary layoff or termination of an employee from employment for reasons other than misconduct that would disqualify such employee for unemployment benefits.

2.9. "Small employer" means any employer that is not subject to COBRA because it employs fewer than 20 employees.

§114-93-3. Continuation of Coverage under Health Benefit Plan.

3.1. *Policy provisions regarding continuation coverage rights.* Every health benefit plan policy and certificate of coverage delivered or issued in this state must provide that, in the event of a qualifying event with respect to a covered employee, such employee and any other qualified beneficiary may elect continuation coverage for up to 18 months under the same terms and rates as would have been applicable had the qualifying event not occurred, except to the degree such rates and terms may be modified in accordance with this rule.

3.1.a. Every plan booklet or other explanation of rights under a health benefit plan must include all information necessary for a qualified beneficiary to comply with the election requirements of subsection 3.6 of this section and either a form for notice of such election to the carrier or directions on how such a form may be found on the Commissioner's website.

3.2. *Periods of continuation coverage.* Continuation coverage under the health benefit plan must, at a minimum, extend for the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

3.2.a. The date that is 18 months after the date on which the qualified beneficiary's benefits under the health benefit plan would otherwise have ceased because of a qualifying event;

3.2.b. The date on which coverage ceases under the health benefit plan by reason of a failure to make timely payment of the applicable premium with respect to any qualified beneficiary. A cancellation for failure to pay premium is subject to the same process as is applicable to other covered employees;

3.2.c. The date a qualified beneficiary becomes covered under any other group health plan if the qualified beneficiary will not be subject to any exclusion or limitation because of a

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preexisting condition of that beneficiary;

3.2.d. The date a qualified beneficiary is entitled to benefits under either part A or part B of Title XVIII of the Social Security Act (Medicare); or

3.2.e. The date on which the employer terminates coverage under the health benefit plan for all employees; however, if the employer terminates coverage under the health benefit plan for all employees and if such health benefit plan is replaced by similar coverage under another health benefit plan, the qualified beneficiary shall have the right to become covered under the new health benefit plan for the balance of the period that she or he would have remained covered under the prior health benefit plan.

3.4. *Notice to carrier.* Any qualified beneficiary may give written notice to the carrier within 20 days after a qualifying event of his or her intent to apply for continuation coverage. The notice must, at a minimum, identify the covered employee, the employer and, to the extent that such information is known, the names and addresses of all other qualified beneficiaries and the health benefit plan number.

3.5. *Notice to beneficiaries by carrier.* Within 10 days after receipt of written notice under subsection 3.4 of this section, the carrier shall send each adult qualified beneficiary by certified mail an election and premium notice, in a form approved by the Commissioner, which must provide for each qualified beneficiary's election or nonelection of continuation of coverage under the health benefit plan and, if elected, the applicable premium amount due. A separate mailing of notices to qualified beneficiaries residing in the same household is not required, but a separate mailing for each separate household in which a qualified beneficiary resides is required.

3.6. *Election of coverage by beneficiary.* A covered employee or other qualified beneficiary who wants to elect continuation coverage must do so in writing to the carrier within 30 days after receiving a notice under subsection 3.5 of this section and must include payment of the initial premium set forth in such notice. The premium due shall be for the period beginning on the date coverage would have otherwise terminated due to the qualifying event. The premium charged for continuation of coverage may not exceed 102% percent of the applicable premium.

3.6.a. The carrier or its designee shall process all elections promptly and provide coverage retroactively to the date coverage would otherwise have terminated on the basis of the qualifying event. After an election and initial premium remittance, the carrier must bill the electing qualified beneficiary for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.

3.6.b. Except as otherwise specified in an election form, an election by a qualified

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beneficiary shall be deemed to include an election of continuation of coverage on behalf of any other qualified beneficiaries residing in the same household who had lost or would lose coverage under the health benefit plan by reason of the qualifying event. Any qualified beneficiary may elect continuation of coverage on behalf of any other qualified beneficiary.

3.7. *Remedies in the event of carrier noncompliance.* If a carrier fails to comply with the requirements of this rule, including the notice requirements of subsection 3.5 of this section, and such noncompliance results in the failure of an eligible qualified beneficiary to timely elect continuation coverage, every person covered under the health benefit plan on the day of the qualifying event shall remain covered under the health benefit plan until the qualified beneficiaries are afforded the opportunity to elect such coverage.

3.7.a. Coverage in accordance with subsection 3.7 of this section shall be limited to the period from the effective date of coverage, had an election been made, through 30 days beyond the date on which the qualified beneficiary or someone on his or her behalf receives actual notice, unless at an earlier date such coverage is affirmatively rejected or such coverage would have terminated for one of the reasons set forth in subdivisions c, d or e, subsection 3.2 of this section.

3.7.b. If a qualified beneficiary who is deemed to be covered pursuant to subsection 3.7 of this section subsequently receives the notice in the form required by subsection 3.5 of this section and affirmatively elects continuation coverage, the initial premium payable may include those amounts that would have been due had the election been made pursuant to a notice timely received pursuant to subsection 3.5 of this section.

3.7.c. This subsection does not apply to the extent that the failure of the carrier to comply with applicable notice requirements was due to noncompliance by a qualified beneficiary with notice requirements under subsections 3.4 or 3.6 of this section.