

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

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W. Va. Code § 33-2-10.

AMENDMENT TO AN EXISTING RULE: YES NO

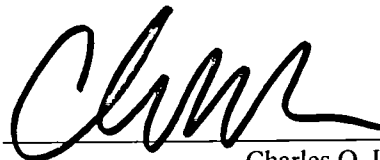
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 93

TITLE OF RULE BEING PROPOSED: Mini-COBRA

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV OFFICES OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: MINI-COBRA
(TITLE 114, SERIES 93)

1. Authorizing statute(s) citation:

W. Va. Code §33-2-10.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 8, 2011 (notice of public comment period).

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended: public comment period ended:

July 8, 2011 (public comment period ended).

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Timothy R. Murphy, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston WV 25305
304-558-6279, Ext. 1210
304-558-1362 FAX
Timothy.Murphy@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
- b. Date of hearing or comment period:
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
- d. Attach findings and determinations and reasons:



SPILMAN THOMAS & BATTLE
ATTORNEYS AT LAW

(304) 340-3829
tcox@spilmanlaw.com

June 2, 2011

Timothy R. Murphy, Esq.
West Virginia Division of Insurance
1124 Smith Street
P. O. Box 50545
Charleston, West Virginia 25305

Re: Series 93, Mini-Cobra

Dear Tim:

Some preliminary comments from one of my clients re Series 93, Mini-Cobra:

Section 2.8 – Termination: No problem with including termination as long as Carrier can confirm “termination” with the employer. For example, we don’t want to have to contact Unemployment Compensation Commission to verify misconduct.

Section 3.2(c): We would like clarification that if Carrier terminates contract (i.e., for nonpayment of premium), then qualified beneficiary’s contract would also terminate.

Section 3.4. In instances when employee must provide notice to the Carrier, we would like notice to be to the address or phone number specified in the benefit document.

Section 3.5: 10 days is not sufficient. We would request a minimum of 15 business days. We would also ask that response not be by certified mail because it places burden on member to obtain package from the post office and adds expense to the insurer. We would also like to fax or e-mail information if member so requests.

Section 3.6a: We would request that consistent with Cobra, the employer, rather than the qualified beneficiary, be directly billed. This is how Cobra works.

Section 3.7: The employee should be required to pay the back premium either along with the initial premium or within thirty days.

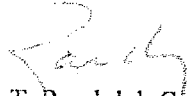
Other comments: If an individual requests enrollment in continuation coverage, we would not be able to enroll them until we confirm the termination date with the employer and obtain the necessary paperwork to terminate the group coverage. 3.6a puts the burden solely on the carrier to enroll the employee promptly. Language should be added to require the employer to promptly provide any information/paperwork necessary to facilitate the processing of a

 SPILMAN THOMAS & BATTLE
ATTORNEYS AT LAW

Tim Murphy
June 2, 2011
Page 2

request for continuation coverage and that Carrier's obligations are conditioned on actions of employer.

Sincerely yours,



T. Randolph Cox

TRC/lb;2862796

July 8, 2011

Comments to Proposed Legislative Rule on Mini-Cobra (Series No. 93)

Prepared by Highmark West Virginia Inc. d/b/a Highmark Blue Cross Blue Shield West Virginia

Mr. Murphy,

Representatives of Highmark West Virginia Inc. ("Highmark WV") have had an opportunity to review the proposed legislative rule and, as a result of that review, have only two concerns to address.

The most applicable text, found in Section 3.5, reads in part as follows (emphasis added):

*"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."*

In prior incarnations of Mini-Cobra, first class mail was the preferred method of distribution, and Highmark WV has legitimate business reasons to suggest it remain so. First of all, companies such as Highmark WV are already balancing the different requirements of federal and state continuation coverage laws, and the more divergent they become, the less efficient we become at carrying out our responsibilities. The timeframes stated throughout the proposed legislative rule become an issue for largely the same reason. The best protection, in our opinion, for the rights of beneficiaries is to align the state program closely with its federal counterpart.

Also of importance, however, is that certified mail carries additional expense. The rule as it currently exists caps the administrative fees Highmark WV is capable of collecting, and the proposed rule does not seek to increase those fees. It does, however, seek to increase the cost of administration. Certified mail may seem a small expense, but spread across thousands of insured groups, small expenses can quickly become big ones.

Please feel free to contact me with any questions or if further discussion is necessary.

Respectfully submitted,

Angela E. Havelly, J.D.
Associate Counsel
Highmark West Virginia Inc.
(304) 424-9086

ATTACHMENT TO QUESTION 2(d):

Coventry raised the following issues in comments to the proposed rule (Highmark of West Virginia also commented on the matters covered in #4 below):

- 1) Section 2.8 defines “qualifying event” to mean the involuntary layoff or termination of a covered employee except any termination for misconduct that would disqualify the former employee from unemployment benefits. Coventry suggests that the carrier be permitted to confirm with the employer that the termination was or was not for cause instead of having to contact the Unemployment Compensation Commission for verification. The Commissioner notes that while a carrier is clearly permitted to attempt to verify through the employer if there was cause for a termination, he also recognizes that nothing in this rule would require employer cooperation. Therefore, a requirement of employer cooperation is added (see response to comment 7 below).
- 2) The rule should be amended to clarify that, as in federal COBRA (*see* I.R.C. § 4980B(f)(2)(C)), a carrier’s permissible termination of a policy (e.g. for nonpayment of premium) would terminate the coverage of any qualified beneficiaries’ coverage as well. In keeping with the general principle that this rule should mirror federal COBRA to the extent possible, the Commissioner agrees to amend subsection 3.2:

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: *Provided, That whenever a policy subject to this rule is terminated by the carrier for any reason permitted by law, the coverage of all qualified beneficiaries is terminated as well:*

- 3) With respect to notices required to be sent to the carrier by the former employee or other qualified beneficiary, section 3.4 should require that the notice be sent to be the address specified in the benefit document. The Commissioner agrees and amends the section as follows:

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. Notice to the carrier by the employee should be to the address specified in the benefit document.

- 4) Section 3.5 mandates that a carrier that receives a notice of intent to apply for continuation benefits must, within 10 days of receiving such a notice, send back an election form and premium notice. Coventry and Highmark suggest that this is too short a period and requests that the response period be expended to at least 15 days. Coventry and Highmark also request that the requirement of certified mail be changed to permit the carrier to send the forms by first class mail or (Coventry), if requested by the employee, by fax or e-mail. The Commissioner notes that federal COBRA permits *employers* to send election forms in a similar manner and therefore agrees to make the suggested amendment:

3.5. Notice to beneficiaries by carrier. Within 15 days after receipt of written notice under subsection 3.5 of this section, the carrier shall send each adult qualified beneficiary 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. Such notices may be sent by first class mail or, if the qualified beneficiary requests, by fax or e-mail.

- 5) Coventry requests that, consistent with federal COBRA, the employer (who is the policyholder on a group policy) rather than the qualified beneficiary, be directly billed for premium. The Commissioner notes that the rule, consistent with federal COBRA (*see* I.R.C. §4980B(f)(2)(C)), gives the carrier the right to charge 102% of premium so as to provide an administrative fee to the employer. Accordingly, subsection 3.6 will be amended to read as follows:

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 payment

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, and the employer may retain 2% of the amount charged as an administrative fee.

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 shall bill the employer for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.

6) In section 3.7, Coventry requests that the qualified beneficiary should (in situations where an election is delayed due to carrier noncompliance with notice and other requirements) be required to pay the back premium either along with the initial premium or within thirty days after that initial payment is due. The Commissioner is of the opinion that the rule as currently written would permit the “initial premium” to encompass the period “beginning on the date coverage would have otherwise terminated due to the qualifying event” as set forth in section 3.6 and that this is already covered by paragraph 3.7.b; therefore, no changes will be made in response to this comment.

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.

7) Coventry notes that it would be unable to process a requested enrollment until the termination date was confirmed with the employer and any necessary paperwork was obtained from the employer. Coventry suggests that the employer be required to promptly provide any information/paperwork necessary to facilitate the processing of a request for continuation coverage and that the carrier’s obligations be conditioned on compliance by the employer. The Commissioner agrees that employer cooperation will be necessary and will amend the rule as follows:

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. Employers are required to promptly

provide to the carrier or its designee any information and paperwork necessary to facilitate the processing of a request for continuation of coverage. After an election and initial premium remittance, the carrier must bill the employer_for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.

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.

APPENDIX B
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

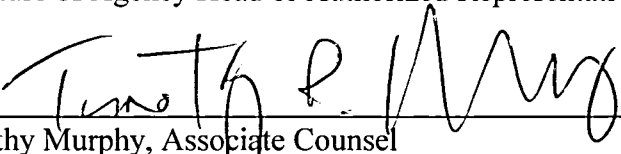
MEMORANDUM

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: 7-28-11

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 JUL 28 PM 2:34
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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: *Provided*, That whenever a policy subject to this rule is terminated by the carrier for any reason permitted by law, the coverage of all qualified beneficiaries is terminated as well:

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;

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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 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. Notice to the carrier by the employee should be to the address specified in the benefit document.

3.5. *Notice to beneficiaries by carrier.* Within 15 days after receipt of written notice under subsection 3.5 of this section, the carrier shall send each adult qualified beneficiary 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. Such notices may be sent by first class mail or, if the qualified beneficiary requests, by fax or e-mail.

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 payment 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, and the employer may retain 2% of the amount charged as an administrative fee.

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

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qualifying event. Employers are required to promptly provide to the carrier or its designee any information and paperwork necessary to facilitate the processing of a request for continuation of coverage. After an election and initial premium remittance, the carrier must bill the employer 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 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.