



DOMESTIC/FOREIGN INSURERS BULLETIN NO. 51

TO: ALL HEALTH INSURANCE CARRIERS, HEALTH SERVICE CORPORATIONS, AND HMOs DOING BUSINESS IN DELAWARE

**RE: MINI-COBRA SMALL EMPLOYER GROUP HEALTH POLICIES
HB 170 w/HA1 (18 Del.C. § 3571F)**

AMENDED DATE: December 10, 2015

ORIGINAL DATE: July 19, 2012

Delaware House Bill 170 with House Amendment 1 ("HB 170" or "mini-COBRA") was signed by Governor Markell on May 21, 2012. House Bill 170 includes a provision to amend Chapter 35, Title 18 of the Delaware Code, by adding new section "3571F. Mini-cobra small employer group health policies." This new section concerns state continuation coverage for employees whose employment terminates or they lose coverage due to a reduction of hours. House Bill 170 applies to small employer group health policies issued on or renewed after June 21, 2012. For clarification purposes, HB 170 became effective for existing policies upon the first group renewal after June 21, 2012.

Delaware's new mini-COBRA law requires small employer group health policies issued to groups that have 1 to 19 employees on a typical business day during the preceding year to provide continuation coverage for members of the group who are terminated from coverage under the policy for up to nine months (exceptions are outlined in [HB 170](#)). For 1 person groups, the provisions of HB 170 apply only to dependents that lose coverage due to a qualifying event.

Two sample notices are attached for consideration and guidance only: [Delaware Mini-COBRA "carrier to employer" notice](#) and [Delaware Mini-COBRA "company to employee" notice](#).

At this time the Department will not be promulgating a Regulation.

Any questions or comments, please contact our Consumer Services staff via e-mail at consumer@state.de.us.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.

**Karen Weldin Stewart, CIR-ML
Insurance Commissioner**



TITLE 18

Insurance Code

Insurance

CHAPTER 35. GROUP AND BLANKET HEALTH INSURANCE

Subchapter III. Provisions Applicable to Group and Blanket Health Insurance

§ 3571F. Mini-COBRA small employer group health policies.

A group policy renewed or delivered or issued for delivery in this State on or after June 21, 2012, by an insurer that insures employees and their eligible dependents for hospital, surgical or major medical insurance shall provide that covered employees or eligible dependents whose coverage under the group policy would otherwise terminate because of a qualifying event shall be entitled to continue their hospital, surgical or major medical coverage under that group policy subject to the following terms and conditions:

(1) Continuation shall only be available to a covered employee or eligible dependent who has been continuously insured under a group policy or for similar benefits under any group policy that it replaced, during the entire 3-month period ending with such termination. If employment is reinstated during the continuation period, then coverage under the group policy must be reinstated for the covered employee and any eligible dependents who were covered under continuation.

(2) Continuation shall not be available for any person covered under the group policy when such person:

- a. Is covered or eligible for coverage under Medicare;
- b. Fails to verify that such person is ineligible for employer-based group health insurance as an eligible dependent; or
- c. Is or could be covered by any other insured or uninsured arrangement which provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to such termination, excluding the medical assistance program established under the Delaware Code.

(3) Continuation must include any benefits provided under the group policy.

(4)a. The group policy shall provide notice to the policyholder of the rights provided under this section. Unless already provided in the group policy, an insurer who has issued a group policy in effect as of June 21, 2012, shall provide such notice to the policyholder by August 5, 2012.

b. The employer of a covered employee under a group policy must notify the administrator or its designee, the covered employee and the insurer of a qualifying event within 30 days of the qualifying event. Notice to the covered employee shall include notice of the rights set forth in this section.

c. Each covered employee or eligible dependent shall notify the administrator or its designee of its election of continuation coverage under this section within 30 days of notice under paragraph (4)b. of this section. The coverage shall be effective as of the date of the qualifying event and shall be the same as the coverage in effect at the time of the qualifying event or any replacement coverage.

d. An administrator or its designee notified under paragraph (4)c. of this section of an election of continuation coverage shall notify the insurer within 14 days of the covered employee's or eligible dependent's election.

e. Except as otherwise specified in an election, any election of continuation coverage by an eligible dependent shall be deemed to include an election of continuation coverage on behalf of any other eligible dependent who would lose coverage under the plan by reason of the qualifying event.

(5)a. The covered employee or eligible dependent requesting the continuation of coverage must pay to the administrator or its designee, on a monthly basis, the amount of contribution required to be paid by the covered employee or eligible dependent to continue the coverage.

b. The premium contribution may not be more than 102% of the group rate of the insurance being continued on the due date of each payment.

c. Nothing in this section shall require the employer to contribute to the deductible of an employee holding a health savings account as defined in the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 223(d)) or other medical spending account as a component of the group policy after the termination date as long as scheduled payments have been made.

(6)a. Continuation of coverage under the group policy for any covered employee or eligible dependent shall terminate upon failure to satisfy paragraph (2) of this section or, if earlier, at the first to occur of the following:

1. The date 9 months after the date the covered employee's or eligible dependent's coverage under the group would have terminated because of a qualifying event;

2. If the employee or member fails to make timely payment of a required premium contribution by the end of the period for which contributions were made;

3. The date on which the group policy is terminated.

b. A covered employee or eligible dependent shall provide written notice to the administrator or its designee within 14 days if, pursuant to paragraph (2) of this section, coverage should not occur.

1. Coverage, as required by this section, may not be conditioned or discriminated on the basis of lack of evidence of insurability.

2. This section shall apply to only those persons who satisfy both of the following criteria:

A. A person who is not subject to the continuation and conversion provisions set forth in Title 1, subtitle b, part 6 of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 29 U.S.C. § 1161, et seq.) or Title XX of the Public Health Service Act, Public Law 99-272, 42 U.S.C. § 300bb-1, et seq.; and

B. A person and the eligible dependents of such person, who is employed by an employer that normally employed between 1 and 19 employees on a typical business day during the preceding year.

3. The Department of Insurance may promulgate regulations as necessary for the implementation and administration of this section.

4. For purposes of this section, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

A. "Administrator" means the person specifically designated by an employer by written agreement to manage the administration of a group policy issued to an employer or, if an administrator is not so designated, the employer.

B. "Covered employee" means an individual who is or was provided coverage under a group policy by virtue of the performance of services by the individual for 1 or more persons maintaining the policy, including as an employee defined in § 401(c)(1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(c)(1)).

C. "Eligible dependent" means: I. With respect to a covered employee under a group health plan, any other individual who on the day before the qualifying event for that employee is a beneficiary under the plan: (A) As the spouse of the covered employee; or (B) As the dependent child of the employee. II. In the case of a "qualifying event" described in paragraph (6)b.4.F.II. of this section, the term includes a covered employee. III. In the case of a "qualifying event" described in paragraph (6)b.4.F.VI. of this section, the term includes a covered employee who had retired on or before the date of substantial elimination of coverage

and any other individual who, on the day before such qualifying event, is a beneficiary under the plan: (A) As the spouse of the covered employee; (B) As the dependent child of the employee; or (C) As the surviving spouse of the covered employee, the term shall also include a child who is born to or placed for adoption with a covered employee during the period of continuation coverage under this section.

D. "Group policy" means any group health insurance policy, subscriber contract, certificate or plan which provides health or sickness and accident coverage which is offered by an insurer. The term shall not include any of the following: I. An accident-only policy. II. A credit-only policy. III. A long-term care or disability income policy. IV. A specified disease policy. V. A Medicare supplement policy. VI. A Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement policy. VII. A fixed indemnity policy. VIII. A dental-only policy. IX. A vision-only policy. X. A workers' compensation policy. XI. An automobile medical payment policy under Chapter 21 of this title. XII. Any other similar policies providing for limited benefits.

E. "Insurer" means any entity that provides health insurance in this State. For purposes of this section, "insurer" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

F. "Qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation of coverage required under this section, would result in the loss of coverage of an eligible dependent: I. The death of a covered employee. II. The termination, other than by reason of such employee's gross misconduct, or reduction of hours of the covered employee's employment. III. The divorce or legal separation of the covered employee from an eligible dependent. IV. The covered employee becoming entitled to benefits under Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395, et seq.). V. A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan. VI. A proceeding in a case under Chapter 11 of Title 11 of the United States Code with respect to the employer from whose employment the covered employee retired at any time. In the case of an event described in this paragraph (6)b.4.F.VI of this section, a loss of coverage includes a substantial elimination of coverage with respect to an eligible dependent within 1 year before or after the date of commencement of the proceeding.

[CARRIER LETTERHEAD]

[DATE]

Dear Valued Customer:

[CARRIER NAME] is dedicated to providing you with information that may affect your company's health insurance policies. Accordingly, we would like to let you know about a new Delaware state law, codified at 18 Del.C. §3571F (the "Mini-COBRA Law"). The Mini-COBRA Law requires small-employer group health insurance policies to provide Mini-COBRA coverage as those policies are renewed or issued beginning on, or after, June 21, 2012. Group health insurance policies include hospital, surgical or major medical insurance, health insurance, and sickness and accident insurance.

The Mini-COBRA Law applies to employers who normally employ one to 19 employees on a typical business day during the preceding calendar year, and who are not subject to the federal COBRA law. The new Delaware law requires those employers to offer Mini-COBRA to all employees and/or eligible dependents who have been continuously insured under a group policy during the three months prior to a qualifying event, and who lose coverage under the policy due to a qualifying event. Qualifying events include, but are not limited to: termination of employment, reduction in hours, divorce, or a dependent's status change due to age.

Employers will have 30 days to notify eligible employees when a qualifying event has occurred. Those employees and/or eligible dependents have 30 days from the notification date to enroll in Mini-COBRA. Coverage under Mini-COBRA may be continued for a maximum of nine (9) months and is contingent upon the payment of premiums and your maintenance of the previously mentioned group health insurance policy. Additional requirements may apply in certain situations. A copy of the Mini-COBRA Law is enclosed.

OPTIONAL LANGUAGE: [CARRIER NAME] will neither administer this law nor collect premiums directly from your employees. Employers will be responsible for managing their own Mini-COBRA compliance. Please submit any related membership activity to [CARRIER NAME] using the attached Delaware Mini-COBRA notification form. This form should be accompanied by the [form name/Member Enrollment Application]. Copies of the forms are also posted on <https://www.>

Please note, this letter is intended to only provide a brief overview of the new Delaware Mini-COBRA Law and is not intended to provide legal advice. [CARRIER NAME] urges you to contact your legal counsel for advice with regard to provisions of this new law and the application of such provisions to your business, employees, and family members.

If you have any questions or would like additional information, please contact your [CARRIER NAME] representative at [PHONE NUMBER].

Thank you for your continued business.

Sincerely,

[CARRIER NAME REPRESENTATIVE]

Enclosure: 18 Del.C. §3571F

Election Notice for Delaware Mini-COBRA Continuation Coverage

[Enter date of notice]

Dear **[Identify the qualified beneficiary(ies), by name or status]**:

This notice contains important information about your right to continue your health care coverage in the [enter name of group health plan] (the Plan). Please read the information contained in this notice very carefully.

To elect continuation coverage, follow the instructions on the following pages to complete the enclosed Continuation Coverage Election Form and submit it to us.

If you do not elect continuation coverage, your coverage under the Plan will end on **[enter date]** due to **[check appropriate box(es)]**:

- ☐ End of employment
 - ☐ Involuntary ☐ Voluntary
- ☐ Divorce or legal separation
- ☐ Death of employee
- ☐ Entitlement to Medicare
- ☐ Reduction in hours of employment
- ☐ Loss of dependent child status

Each person in the category(ies) checked below is entitled to elect continuation coverage, which will continue group health care coverage under the Plan for up to nine (9) months **[Check appropriate box or boxes; names may be added]**:

- ☐ Employee or former employee
- ☐ Spouse or former spouse
- ☐ Dependent child(ren) covered under the Plan on the day before the event that caused the loss of coverage
- ☐ Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan

If elected, continuation coverage will begin on **[enter date]** and can last until **[enter date]**.

Continuation coverage will cost: **[enter amount each qualified beneficiary will be required to pay for each option per month of coverage and any other permitted coverage periods – not more than 102% of the group rate of the insurance being continued on the due date of each payment]**. Important information about payment for continuation coverage is included in the pages following the Election Form.

If you have any questions about this notice or your rights to continuation coverage, you should contact **[enter name of party responsible for continuation coverage administration, with telephone number and address]**.

DELAWARE MINI-COBRA CONTINUATION COVERAGE ELECTION FORM

Instructions: To elect continuation coverage, complete this Election Form and return it to us. Under Delaware law, you have thirty (30) days after the date of this notice to decide whether you want to elect continuation coverage.

Send completed Election Form to: [Enter Name and Address]

This Election Form must be completed and returned by mail [or describe other means of submission and due date]. If mailed, it must be post-marked no later than [enter date].

If you do not submit a completed Election Form by the due date shown above, you will lose your right to elect continuation coverage. If you reject continuation coverage before the due date, you may change your mind as long as you furnish a completed Election Form before the due date.

Read the important information about your rights included in the pages after the Election Form.

I (We) elect continuation coverage in the [enter name of plan] (the Plan) as indicated below:

Name	Date of Birth	Relationship to Employee	SSN (or other identifier)
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a.			
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b.			
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c.			
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Signature

Date

Print Name

Relationship to individual(s) listed above

Print Address

Telephone number

Important Information about Delaware Mini-COBRA Continuation Coverage Rights

What is continuation coverage?

Delaware law (18 *Del.C.* §3571F) now requires small employers (those normally employing 1-19 persons) to offer to employees and their families the opportunity to continue their coverage for up to nine (9) months when there is a “qualifying event” that otherwise would result in a loss of coverage under an employer’s plan. Depending on the type of qualifying event, employees and dependents eligible to continue coverage may include the employee (or retired employee) covered under the group health plan, the covered employee’s spouse, and the dependent children of the covered employee.

Continuation coverage is the same coverage, with no break in coverage, that the Plan gives to other participants or beneficiaries under the Plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan.

Who is eligible, and how long will Delaware’s Mini-COBRA continuation coverage last?

Employees and eligible dependents who have been continuously insured under the group policy or for similar benefits under any group policy which it replaced, for the three consecutive months ending with the employee’s termination by a qualifying event. Coverage may be continued for up to nine (9) months. Continuation coverage is not available if:

- (1) the employee or eligible dependent is eligible for coverage under Medicare;
- (2) the employee or eligible dependent fails to verify that he is ineligible for employer-based group health insurance as an eligible dependent;

or

- (3) the employee or eligible dependent is or could be covered by any other insured or uninsured arrangement that provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to the termination of the employee’s group coverage (excluding Medicaid and CHIP – the Children’s Health Insurance Program).

If any of these three disqualifying events takes place after continuation coverage has begun, eligibility for coverage ends. The employee or eligible dependent is required within fourteen (14) days of the occurrence of a disqualifying event to provide written notice to the administrator that coverage should terminate.

In addition, continuation coverage will end:

- (1) if the employee or eligible dependent fails to make timely payment of a required premium contribution;

or

- (2) if the group policy is terminated.

How can you elect continuation coverage?

To elect continuation coverage, each covered employee or eligible dependent must complete the Continuation Coverage Election Form and furnish it according to the directions on the Form. Unless an eligible dependent's election otherwise specifies, election of continuation coverage by an eligible dependent will be deemed an election of continuation coverage on behalf of any other eligible dependent who would lose coverage by reason of the qualifying event.

In considering whether to elect continuation coverage, you should take into account that a failure to continue your group health coverage will affect your future rights under federal and state law. First, you can lose the right to avoid having preexisting condition exclusions applied to you by other group health plans if you have a 63-day gap in health coverage; election of continuation coverage may help prevent such a gap. Second, you will lose the guaranteed right to purchase individual health coverage that does not impose a preexisting condition exclusion if you do not elect continuation coverage for the maximum time available to you.

How much does continuation coverage cost?

Continuation coverage will cost *[enter amount each qualified beneficiary will be required to pay for each option per month of coverage and any other permitted coverage periods – not more than 102% of the group rate of the insurance being continued on the due date of each payment]*.

When and how must payment for continuation coverage be made?

[Insert information regarding the requirements related to payment for continuation coverage, including any periodic payment provisions or permissible grace periods.]

You may contact *[enter appropriate contact information for the party responsible for continuation coverage administration under the Plan]* to confirm the correct amount of your first payment.

Your payment(s) for continuation coverage should be sent to:

[enter appropriate payment address]

For more information.

This notice does not fully describe continuation coverage or other rights with respect to your coverage. More information is available from *[enter appropriate contact information for the party responsible for continuation coverage administration under the Plan]*.

If you have any questions concerning the information in this notice or your rights to coverage, you should contact *[enter name of party responsible for continuation coverage administration, with telephone number and address]*.

Keep Your Administrator Informed of Address Changes

In order to protect your and your family's rights, you should keep *[enter name and contact information for the appropriate party responsible for continuation coverage administration]* informed of any changes in your address and the addresses of family members. You should also keep a copy, for your records, of any notices you send to *[enter the name of the party responsible for continuation coverage administration]*.