AMENDED IN SENATE APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

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AMENDED IN ASSEMBLY FEBRUARY 23, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 23

Introduced by Assembly Members Jones and Fletcher
(Principal coauthor: Senator Alquist)
(Coauthor: Assembly Member Salas)
(Coauthor: Senator Maldonado)

December 1, 2008

An act to amend Sections 1366.20, 1366.21, 1366.22, and 1366.25 of the Health and Safety Code, and to amend Sections 10128.50, 10128.51, 10128.52, and 10128.55 of the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 23, as amended, Jones. Cal-COBRA: premium assistance.

Existing federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), requires group health plans providing coverage to employers of 20 or more employees to provide former employees with continuation of benefits, as specified. Existing federal law, the American Recovery and Reinvestment Act of 2009, provides specified premium assistance under COBRA and state programs that provide comparable continuation coverage for certain assistance eligible individuals, as defined.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law also provides for regulation of health insurers by the Department of Insurance. Existing law, the California Continuation Benefits Replacement Act (Cal-COBRA), requires health care service plans and health insurers providing group coverage to employers of 2 to 19 employees to offer continuation of that coverage for a specified period of time to certain qualified beneficiaries, as specified.

This bill would require health care service plans and health insurers to provide notice of the availability of premium assistance under the federal American Recovery and Reinvestment Act of 2009 to qualified beneficiaries who may be eligible for that assistance, as specified, and would require the notice to include certain information and to be sent within specified periods of time. The bill would allow a qualified beneficiary eligible for the federal premium assistance to elect Cal-COBRA coverage within a certain period of time and would allow individuals enrolled in Cal-COBRA coverage as of February 17, 2009, to request application of the federal premium assistance, as specified. The bill would authorize the Director of the Department of Managed Health Care and the Insurance Commissioner to adopt emergency regulations in the event that any federal assistance is or becomes available to persons eligible for Cal-COBRA, as specified. *The bill would enact other related provisions.*

Because a willful violation of these requirements *by a health care service plan* would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1366.20 of the Health and Safety Code is amended to read:

1366.20. (a) This article shall be known as the California Continuation Benefits Replacement Act, or "Cal-COBRA."

(b) It is the intent of the Legislature that continued access to health insurance coverage is provided to employees, and their dependents, of employers with 2 to 19 eligible employees who are not currently offered continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

(c) It is the intent of the Legislature that any federal assistance that is or may become available to qualified beneficiaries under this article be effectively and promptly implemented by the department.

(d) The director, in consultation with the Insurance Commissioner, may adopt emergency regulations to implement this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code by making a finding of emergency and demonstrating the need for immediate action in the event that any federal assistance is or becomes available to qualified beneficiaries under this article. The adoption of these regulations shall be considered by the Office of Administrative Law to be necessary to avoid serious harm to the public peace, health, safety, or general welfare. Any regulations adopted pursuant to this subdivision shall be substantially similar to those adopted by the Insurance Commissioner under subdivision (d) of Section 10128.50 of the Insurance Code.

SEC. 2. Section 1366.21 of the Health and Safety Code is amended to read:

1366.21. The definitions contained in this section govern the construction of this article.

(a) "Continuation coverage" means extended coverage under the group benefit plan in which an eligible employee or eligible dependent is currently enrolled, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" means any health care service plan contract provided pursuant to Article 3.1 (commencing with

Section 1357) to an employer with 2 to 19 eligible employees, as defined in Section 1357, as well as a specialized health care service plan contract provided to an employer with 2 to 19 eligible employees, as defined in Section 1357.

(c) (1) "Qualified beneficiary" means any individual who, on the day before the qualifying event, is an enrollee in a group benefit plan offered by a health care service plan pursuant to Article 3.1 (commencing with Section 1357) and has a qualifying event, as defined in subdivision (d).

(2) "Qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)" means a qualified beneficiary, as defined in paragraph (1), who (A) was or is eligible for continuation coverage as a result of the involuntary termination of the covered employee's employment during the period that begins with September 1, 2008, and ends with December 31, 2009, (B) elects continuation coverage, and (C) meets the definition of "qualified beneficiary" set forth in paragraph (3) of Section 1167 of Title 29 of the United States Code, as used in subparagraph (E) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or any subsequent rules or regulations issued pursuant to that law.

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination of employment or reduction in hours of the covered employee's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a covered dependent only, the covered employee's entitlement to benefits under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 1357 and (1) employed

2 to 19 eligible employees on at least 50 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 2 to 19 eligible employees on at least 50 percent of its working days during the preceding calendar quarter, (2) has contracted for health care coverage through a group benefit plan offered by a health care service plan, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(f) "Core coverage" means coverage of basic health care services, as defined in subdivision (b) of Section 1345, and other hospital, medical, or surgical benefits provided by the group benefit plan that a qualified beneficiary was receiving immediately prior to the qualifying event, other than noncore coverage.

(g) "Noncore coverage" means coverage for vision and dental care.

SEC. 3. Section 1366.22 of the Health and Safety Code is amended to read:

1366.22. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled to Medicare benefits or become entitled to Medicare benefits pursuant to Title XVIII of the United States Social Security Act, as amended or superseded. Entitlement to Medicare Part A only constitutes entitlement to benefits under Medicare.

(b) Individuals who have other hospital, medical, or surgical coverage or who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 1357 and 1357.06. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual is or becomes covered.

(c) Individuals who are covered, become covered, or are eligible for federal COBRA coverage pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the

Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or are eligible for coverage pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 1366.24 or subdivision (h) of Section 1366.25 regarding notification of a qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 1366.24 and Section 1366.26, in accordance with the terms and conditions of the plan contract, or fail to satisfy other terms and conditions of the plan contract.

SEC. 4. Section 1366.25 of the Health and Safety Code is amended to read:

1366.25. (a) Every group contract between a health care service plan and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify the plan, in writing, of any employee who has had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 1366.21, within 30 days of the qualifying event. The group contract shall also require the employer to notify the plan, in writing, within 30 days of the date, when the employer becomes subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(b) Every group contract between a plan and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 1366.27, of the qualified beneficiary's ability to continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. This notice shall be provided either 30 days prior to the termination or when all enrolled employees are notified, whichever is later.

Every health care service plan and specialized health care service plan shall provide to the employer replacing a health care service plan contract issued by the plan, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the plan reasonably required to administer the notification requirements of this subdivision and subdivision (c).

(c) Notwithstanding subdivision (a), the group contract between the health care service plan and the employer shall require the employer to notify the successor plan in writing of the qualified beneficiaries currently receiving continuation coverage so that the successor plan, or contracting employer or administrator, may provide those qualified beneficiaries with the necessary premium information, enrollment forms, and instructions consistent with the disclosure required by subdivision (c) of Section 1366.24 and subdivision (e) of this section to allow the qualified beneficiary to continue coverage. This information shall be sent to all qualified beneficiaries who are enrolled in the plan and those qualified beneficiaries who have been notified, pursuant to Section 1366.24, of their ability to continue their coverage and may still elect coverage within the specified 60-day period. This information shall be sent to the qualified beneficiary's last known address, as provided to the employer by the health care service plan or disability insurer currently providing continuation coverage to the qualified beneficiary. The successor plan shall not be obligated to provide this information to qualified beneficiaries if the employer or prior plan or insurer fails to comply with this section.

(d) A health care service plan may contract with an employer, or an administrator, to perform the administrative obligations of the plan as required by this article, including required notifications and collecting and forwarding premiums to the health care service plan. Except for the requirements of subdivisions (a), (b), and (c), this subdivision shall not be construed to permit a plan to require an employer to perform the administrative obligations of the plan as required by this article as a condition of the issuance or renewal of coverage.

(e) Every health care service plan, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the

necessary benefits information, premium information, enrollment forms, and disclosures consistent with the notice requirements contained in subdivisions (b) and (c) of Section 1366.24 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

(f) Every health care service plan, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, during the 180-day period ending on the date that continuation coverage is terminated pursuant to paragraphs (1), (3), and (5) of subdivision (a) of Section 1366.27, notify a qualified beneficiary who has elected continuation coverage pursuant to this article of the date that his or her coverage will terminate, and shall notify the qualified beneficiary of any conversion coverage available to that qualified beneficiary. This requirement shall not apply when the continuation coverage is terminated because the group contract between the plan and the employer is being terminated.

(g) (1) A health care service plan shall provide to a qualified beneficiary who has a qualifying event between September 1, 2008, and December 31, 2009, inclusive, a written notice containing information on the availability of premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). This notice shall be sent to the qualified beneficiary's last known address. The notice shall include ~~language that adequately informs a reasonable person of changes~~ *clear and easily understandable language to inform the qualified beneficiary that changes* in federal law ~~that~~ provide a new opportunity to elect continuation coverage with a 65-percent premium subsidy and shall include all of the following:

(A) The amount of the premium the person will pay. For qualified beneficiaries who had a qualifying event between September 1, 2008, and the effective date of this subdivision, inclusive, if a health care service plan 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, the correct premium that would apply to the beneficiary.

(B) Enrollment forms and any other information required to be included pursuant to subdivision (e) to allow the qualified

beneficiary to elect continuation coverage. This information shall not be included in notices sent to qualified beneficiaries currently enrolled in continuation coverage.

(C) A description of the option to enroll in different coverage as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). *This description shall advise the qualified beneficiary to contact the covered employee's former employer for prior approval to choose this option.*

(D) The eligibility requirements for premium assistance in the amount of 65 percent of the premium under Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(E) The duration of premium assistance available under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(F) A statement that a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect continuation coverage no later than 60 days of the date of the notice.

(G) A statement that a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) who had *a qualifying event between September 1, 2008, and 14 days following the effective date of this subdivision, inclusive, and had* previously rejected or discontinued continuation coverage *prior to receiving the notice required by this subdivision* has the right to withdraw that rejection and elect continuation coverage with the premium assistance.

(H) A statement that reads as follows:

IF YOU ARE HAVING ANY DIFFICULTIES READING OR UNDERSTANDING THIS NOTICE, PLEASE CONTACT [name of health plan] at [insert appropriate telephone number].

(2) With respect to qualified beneficiaries who had a qualifying event between September 1, 2008, and the effective date of this subdivision, inclusive, the notice described in this subdivision

shall be provided within 14 days of the effective date of this subdivision.

(3) With respect to qualified beneficiaries who had or have a qualifying event between the day after the effective date of this subdivision, and December 31, 2009, inclusive, the notice described in this subdivision shall be provided within the period of time specified in subdivision (e).

(4) For purposes of compliance with the notice requirements of this subdivision, the department may designate a model notice or notices that may be used by health care service plans. Use of the model notice or notices shall not require prior approval by the department. Any model notice or notices designated by the department for purposes of this subdivision shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(5) Nothing in this section shall be construed to require a health care service plan to provide the plan's evidence of coverage as a part of the notice required by this ~~subdivision~~ *subdivision, and nothing in this section shall be construed to require a health care service plan to amend its existing evidence of coverage to comply with the changes made to this section by the act amending this section during the first year of the 2009–10 Regular Session*.

(h) (1) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect continuation coverage no later than 60 days after the date of the notice required by subdivision (g).

(2) For a qualified beneficiary who elects to continue coverage pursuant to paragraph (1), the period beginning on the date of the qualifying event and ending on the effective date of the continuation coverage shall be disregarded for purposes of calculating a break in coverage in determining whether a preexisting condition provision applies under subdivision (c) of Section 1357.06 or subdivision (e) of Section 1357.51.

(3) For a qualified beneficiary who had a qualifying event between September 1, 2008, and February 16, 2009, inclusive, and who elects continuation coverage pursuant to paragraph (1), the

continuation coverage shall commence on the first day of the month following the election.

(4) For a qualified beneficiary who had a qualifying event between February 17, 2009, and the effective date of this subdivision, inclusive, and who elects continuation coverage pursuant to paragraph (1), the effective date of the continuation coverage shall be either of the following, at the option of the beneficiary, provided that the beneficiary pays the applicable premiums:

(A) The date of the qualifying event.

(B) The first day of the month following the election.

(i) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect to enroll in different coverage subject to the criteria provided under subparagraph (B) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(j) A qualified beneficiary enrolled in continuation coverage as of February 17, 2009, who is eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may request application of the premium assistance as of March 1, 2009, or later, consistent with Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(k) A health care service plan that receives an election notice from a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), pursuant to subdivision (h), shall be considered a person entitled to reimbursement, as defined in Section 6432(b)(3) of the Internal Revenue Code, as amended by paragraph (12) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(l) (1) For purposes of compliance with Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), in the absence of guidance from, or if specifically required for state-only continuation coverage by, the United States Department of Labor, the Internal Revenue Service, or the Centers

for Medicare and Medicaid Services, a health care service plan may request verification of the involuntary termination of a covered employee's employment from the covered employee's former employer or the qualified beneficiary seeking premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(2) A health care service plan that requests verification pursuant to paragraph (1) directly from a covered employee's former employer shall do so by providing a written notice to the employer. For a qualified beneficiary who became eligible for continuation coverage prior to the effective date of this subdivision, this written notice shall be sent by certified mail to the covered employee's former employer within three business days from the date the plan receives the qualified beneficiary's election notice pursuant to subdivision (h). Within 10 calendar days of receipt of written notice required by this paragraph, the former employer shall furnish to the health care service plan written verification as to whether the covered employee's employment was involuntarily terminated.

(3) A qualified beneficiary requesting premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may furnish to the health care service plan a written document or other information from the covered employee's former employer indicating that the covered employee's employment was involuntarily terminated. This document or information shall be deemed sufficient by the health care service plan to establish that the covered employee's employment was involuntarily terminated for purposes of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), unless the plan makes a reasonable and timely determination that the documents or information provided by the qualified beneficiary are legally insufficient to establish involuntary termination of employment.

(4) If a health care service plan requests verification pursuant to this subdivision and cannot verify involuntary termination of employment within 14 business days from the date the employer receives the verification request or from the date the plan receives documentation or other information from the qualified beneficiary pursuant to paragraph (3), the health care service plan shall either provide continuation coverage with the federal premium assistance to the qualified beneficiary or send the qualified beneficiary a

denial letter which shall include notice of his or her right to appeal that determination pursuant to Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(5) No person shall intentionally delay verification of involuntary termination of employment under this subdivision.

(m) The provision of information and forms related to the premium assistance available pursuant to Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) to individuals by a health care service plan prior to the effective date of this subdivision shall not be considered a violation of this chapter provided that the plan complies with all of the requirements of this article.

SEC. 5. Section 10128.50 of the Insurance Code is amended to read:

10128.50. (a) This article shall be known as the California Continuation Benefits Replacement Act, or "Cal-COBRA."

(b) It is the intent of the Legislature that continued access to health insurance coverage is provided to employees, and their dependents, of employers with 2 to 19 eligible employees who are not currently offered continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985.

(c) It is the intent of the Legislature that any federal assistance that is or may become available to qualified beneficiaries under this article be effectively and promptly implemented by the department.

(d) The commissioner, in consultation with the Director of the Department of Managed Health Care, may adopt emergency regulations to implement this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code by making a finding of emergency and demonstrating the need for immediate action in the event that any federal assistance is or becomes available to qualified beneficiaries under this article. The adoption of these regulations shall be considered by the Office of Administrative Law to be necessary to avoid serious harm to the public peace, health, safety, or general welfare. Any regulations adopted pursuant to this subdivision shall be substantially similar to those adopted by the Director of the Department of Managed Health Care under subdivision (d) of Section 1366.20 of the Health and Safety Code.

SEC. 6. Section 10128.51 of the Insurance Code is amended to read:

10128.51. (a) "Continuation coverage" means extended coverage under the group benefit plan under which an eligible employee or eligible dependent is currently covered, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" has the same meaning as "health benefit plan" defined in Section 10700, including group policies of vision-only and dental-only coverage, provided pursuant to Chapter 8 (commencing with Section 10700) to an employer with 2 to 19 eligible employees, as defined in Section 10700.

(c) (1) "Qualified beneficiary" means any individual who, on the day before the qualifying event, is covered under a group benefit plan offered by a disability insurer pursuant to Article 1 (commencing with Section 10700) of Chapter 8, and has a qualifying event, as defined in subdivision (d).

(2) "Qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)" means a qualified beneficiary, as defined in paragraph (1), who (A) was or is eligible for continuation coverage as a result of the involuntary termination of the covered employee's employment during the period that begins with September 1, 2008, and ends with December 31, 2009, (B) elects continuation coverage, and (C) meets the definition of "qualified beneficiary" set forth in paragraph (3) of Section 1167 of Title 29 of the United States Code, as used in subparagraph (E) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or any subsequent rules or regulations issued pursuant to that law.

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination of employment or reduction in hours of the covered employee's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a covered dependent only, the covered employee's entitlement to benefits under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 10700 and (1) employed 2 to 19 eligible employees on at least 50 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 2 to 19 eligible employees on at least 50 percent of its working days during the preceding calendar quarter, (2) has contracted for health care coverage through a group benefit plan offered by a disability insurer, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(f) "Core coverage" means coverage for hospital, medical, or surgical benefits provided under the group benefit plan that a qualified beneficiary was receiving immediately prior to the qualifying event, other than noncore coverage.

(g) "Noncore coverage" means coverage for vision and dental care.

SEC. 7. Section 10128.52 of the Insurance Code is amended to read:

10128.52. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled to Medicare benefits or become entitled to Medicare benefits pursuant to Title XVIII of the United States Social Security Act, as amended or superseded. Entitlement to Medicare Part A only constitutes entitlement to benefits under Medicare.

(b) Individuals who have other hospital, medical, or surgical coverage, or who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting

condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 10198.6 and 10198.7. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual is or becomes covered.

(c) Individuals who are covered, become covered, or are eligible for federal COBRA coverage pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or are eligible for coverage pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 10128.54 or subdivision (h) of Section 10128.55 regarding notification of a qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 10128.55 and Section 10128.57, in accordance with the terms and conditions of the policy or contract, or fail to satisfy other terms and conditions of the policy or contract.

SEC. 8. Section 10128.55 of the Insurance Code is amended to read:

10128.55. (a) Every group benefit plan contract between a disability insurer and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify the insurer in writing of any employee who has had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 10128.51, within 30 days of the qualifying event. The group contract shall also require the employer to notify the insurer, in writing, within 30 days of the date when the employer becomes subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(b) Every group benefit plan contract between a disability insurer and an employer subject to this article that is issued, amended, or renewed after July 1, 1998, shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group

benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 10128.57, of the qualified beneficiary's ability to continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. This notice shall be provided either 30 days prior to the termination or when all enrolled employees are notified, whichever is later.

Every disability insurer shall provide to the employer replacing a group benefit plan policy issued by the insurer, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the insurer reasonably required to administer the notification requirements of this subdivision and subdivision (c).

(c) Notwithstanding subdivision (a), the group benefit plan contract between the insurer and the employer shall require the employer to notify the successor plan in writing of the qualified beneficiaries currently receiving continuation coverage so that the successor plan, or contracting employer or administrator, may provide those qualified beneficiaries with the necessary premium information, enrollment forms, and instructions consistent with the disclosure required by subdivision (c) of Section 10128.54 and subdivision (e) of this section to allow the qualified beneficiary to continue coverage. This information shall be sent to all qualified beneficiaries who are enrolled in the group benefit plan and those qualified beneficiaries who have been notified, pursuant to Section 10128.54 of their ability to continue their coverage and may still elect coverage within the specified 60-day period. This information shall be sent to the qualified beneficiary's last known address, as provided to the employer by the health care service plan or, disability insurer currently providing continuation coverage to the qualified beneficiary. The successor insurer shall not be obligated to provide this information to qualified beneficiaries if the employer or prior insurer or health care service plan fails to comply with this section.

(d) A disability insurer may contract with an employer, or an administrator, to perform the administrative obligations of the plan as required by this article, including required notifications and collecting and forwarding premiums to the insurer. Except for the requirements of subdivisions (a), (b), and (c), this subdivision shall

not be construed to permit an insurer to require an employer to perform the administrative obligations of the insurer as required by this article as a condition of the issuance or renewal of coverage.

(e) Every insurer, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the necessary premium information, enrollment forms, and disclosures consistent with the notice requirements contained in subdivisions (b) and (c) of Section 10128.54 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

(f) Every insurer, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, during the 180-day period ending on the date that continuation coverage is terminated pursuant to paragraphs (1), (3), and (5) of subdivision (a) of Section 10128.57, notify a qualified beneficiary who has elected continuation coverage pursuant to this article of the date that his or her coverage will terminate, and shall notify the qualified beneficiary of any conversion coverage available to that qualified beneficiary. This requirement shall not apply when the continuation coverage is terminated because the group contract between the insurer and the employer is being terminated.

(g) (1) An insurer shall provide to a qualified beneficiary who has a qualifying event between September 1, 2008, and December 31, 2009, inclusive, a written notice containing information on the availability of premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). This notice shall be sent to the qualified beneficiary's last known address. The notice shall include ~~language that adequately informs a reasonable person of changes in federal law that provide~~ *clear and easily understandable language to inform the qualified beneficiary that changes in federal law provide* a new opportunity to elect continuation coverage with a 65-percent premium subsidy and shall include all of the following:

(A) The amount of the premium the person will pay. For qualified beneficiaries who had a qualifying event between September 1, 2008, and the effective date of this subdivision, inclusive, if an insurer 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, the correct premium that would apply to the beneficiary.

(B) Enrollment forms and any other information required to be included pursuant to subdivision (e) to allow the qualified beneficiary to elect continuation coverage. This information shall not be included in notices sent to qualified beneficiaries currently enrolled in continuation coverage.

(C) A description of the option to enroll in different coverage as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(D) The eligibility requirements for premium assistance in the amount of 65 percent of the premium under Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). *This description shall advise the qualified beneficiary to contact the covered employee's former employer for prior approval to choose this option.*

(E) The duration of premium assistance available under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(F) A statement that a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect continuation coverage no later than 60 days of the date of the notice.

(G) A statement that a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) who had *a qualifying event between September 1, 2008, and 14 days following the effective date of this subdivision, inclusive, and had* previously rejected or discontinued continuation coverage *prior to receiving the notice required by this subdivision* has the right to withdraw that rejection and elect continuation coverage with the premium assistance.

(H) A statement that reads as follows:

IF YOU ARE HAVING ANY DIFFICULTIES READING OR UNDERSTANDING THIS NOTICE, PLEASE CONTACT [name of insurer] at [insert appropriate telephone number].

(2) With respect to qualified beneficiaries who had a qualifying event between September 1, 2008, and the effective date of this subdivision, inclusive, the notice described in this subdivision shall be provided within 14 days of the effective date of this subdivision.

(3) With respect to qualified beneficiaries who had or have a qualifying event between the day after the effective date of this subdivision, and December 31, 2009, inclusive, the notice described in this subdivision shall be provided within the period of time specified in subdivision (e).

~~(4) For purposes of compliance with the notice requirements of this subdivision, the department may designate a model notice or notices that may be used by plans. Use of the model notice or notices shall not require prior approval by the department. Any model notice or notices designated by the department for purposes of this subdivision shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

~~(5)~~

(4) Nothing in this section shall be construed to require an insurer to provide the insurer's evidence of coverage as a part of the notice required by this ~~subdivision~~ *subdivision, and nothing in this section shall be construed require an insurer to amend its existing evidence of coverage to comply with the changes made to this section by the act amending this section during the first year of the 2009–10 Regular Session*.

(h) (1) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect continuation coverage no later than 60 days after the date of the notice required by subdivision (g).

(2) For a qualified beneficiary who elects to continue coverage pursuant to paragraph (1), the period beginning on the date of the qualifying event and ending on the effective date of the continuation coverage shall be disregarded for purposes of

calculating a break in coverage in determining whether a preexisting condition provision applies under subdivision (e) of Section 10198.7 or subdivision (c) of Section 10708.

(3) For a qualified beneficiary who had a qualifying event between September 1, 2008, and February 16, 2009, inclusive, and who elects continuation coverage pursuant to paragraph (1), the continuation coverage shall commence on the first day of the month following the election.

(4) For a qualified beneficiary who had a qualifying event between February 17, 2009, and the effective date of this subdivision, inclusive, and who elects continuation coverage pursuant to paragraph (1), the effective date of the continuation coverage shall be either of the following, at the option of the beneficiary, provided that the beneficiary pays the applicable premiums:

(A) The date of the qualifying event.

(B) The first day of the month following the election.

(i) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may elect to enroll in different coverage subject to the criteria provided under subparagraph (B) of paragraph (1) of subdivision (a) of Section 3001 of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(j) A qualified beneficiary enrolled in continuation coverage as of February 17, 2009, who is eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may request application of the premium assistance as of March 1, 2009, or later, consistent with Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(k) An insurer that receives an election notice from a qualified beneficiary eligible for premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), pursuant to subdivision (h), shall be considered a person entitled to reimbursement, as defined in Section 6432(b)(3) of the Internal Revenue Code, as amended by paragraph (12) of subdivision (a) of Section 3001 of Title III of

Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(l) (1) For purposes of compliance with Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), in the absence of guidance from, or if specifically required for state-only continuation coverage by, the United States Department of Labor, the Internal Revenue Service, or the Centers for Medicare and Medicaid Services, an insurer may request verification of the involuntary termination of a covered employee's employment from the covered employee's former employer or the qualified beneficiary seeking premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(2) An insurer that requests verification pursuant to paragraph (1) directly from a covered employee's former employer shall do so by providing a written notice to the employer. For a qualified beneficiary who became eligible for continuation coverage prior to the effective date of this subdivision, this written notice shall be sent by certified mail to the covered employee's former employer within three business days from the date the insurer receives the qualified beneficiary's election notice pursuant to subdivision (h). Within 10 calendar days of receipt of written notice required by this paragraph, the former employer shall furnish to the insurer written verification as to whether the covered employee's employment was involuntarily terminated.

(3) A qualified beneficiary requesting premium assistance under Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) may furnish to the insurer a written document or other information from the covered employee's former employer indicating that the covered employee's employment was involuntarily terminated. This document or information shall be deemed sufficient by the insurer to establish that the covered employee's employment was involuntarily terminated for purposes of Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), unless the insurer makes a reasonable and timely determination that the documents or information provided by the qualified beneficiary are legally insufficient to establish involuntary termination of employment.

(4) If an insurer requests verification pursuant to this subdivision and cannot verify involuntary termination of

employment within 14 business days from the date the employer receives the verification request or from date the insurer receives documentation or other information from the qualified beneficiary pursuant to paragraph (3), the insurer shall either provide continuation coverage with the federal premium assistance to the qualified beneficiary or send the qualified beneficiary a denial letter which shall include notice of his or her right to appeal that determination pursuant to Title III of Division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(5) No person shall intentionally delay verification of involuntary termination of employment under this subdivision.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make federal funds available at the earliest possible time to address the state's pressing need for federally subsidized health care coverage premiums for individuals who have lost group health care coverage due to a qualifying event and may be eligible for state continuation coverage under Cal-COBRA and in order to help carry out the powers of the Department of Insurance and the Department of Managed Health Care to protect the interests of the public and carry out the intent of the Legislature to encourage the availability of health care coverage to the public without gaps in coverage when possible, it is necessary that this act take effect immediately.

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