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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: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

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

3 1366.20. (a) This article shall be known as the California
4 Continuation Benefits Replacement Act, or “Cal-COBRA.”

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

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

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

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

29 1366.21. The definitions contained in this section govern the
30 construction of this article.

31 (a) “Continuation coverage” means extended coverage under
32 the group benefit plan in which an eligible employee or eligible
33 dependent is currently enrolled, or, in the case of a termination of
34 the group benefit plan or an employer open enrollment period,
35 extended coverage under the group benefit plan currently offered
36 by the employer.

37 (b) “Group benefit plan” means any health care service plan
38 contract provided pursuant to Article 3.1 (commencing with

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

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

10 (2) “Qualified beneficiary eligible for premium assistance under
11 Title III of Division B of the American Recovery and Reinvestment
12 Act of 2009 (Public Law 111-5)” means a qualified beneficiary,
13 as defined in paragraph (1), who (A) was or is eligible for
14 continuation coverage as a result of the involuntary termination
15 of the covered employee’s employment during the period that
16 begins with September 1, 2008, and ends with December 31, 2009,
17 (B) elects continuation coverage, and (C) meets the definition of
18 “qualified beneficiary” set forth in paragraph (3) of Section 1167
19 of Title 29 of the United States Code, as used in subparagraph (E)
20 of paragraph (1) of subdivision (a) of Section 3001 of Title III of
21 Division B of the American Recovery and Reinvestment Act of
22 2009 (Public Law 111-5) or any subsequent rules or regulations
23 issued pursuant to that law.

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

28 (1) The death of the covered employee.

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

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

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

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

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

1 2 to 19 eligible employees on at least 50 percent of its working
2 days during the preceding calendar year, or, if the employer was
3 not in business during any part of the preceding calendar year,
4 employed 2 to 19 eligible employees on at least 50 percent of its
5 working days during the preceding calendar quarter, (2) has
6 contracted for health care coverage through a group benefit plan
7 offered by a health care service plan, and (3) is not subject to
8 Section 4980B of the United States Internal Revenue Code or
9 Chapter 18 of the Employee Retirement Income Security Act, 29
10 U.S.C. Section 1161 et seq.

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

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

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

20 1366.22. The continuation coverage requirements of this article
21 do not apply to the following individuals:

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

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

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

1 Employee Retirement Income Security Act, 29 U.S.C. Section
2 1161 et seq.

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

6 (e) Qualified beneficiaries who fail to meet the requirements of
7 subdivision (b) of Section 1366.24 or subdivision (h) of Section
8 1366.25 regarding notification of a qualifying event or election of
9 continuation coverage within the specified time limits.

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

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

17 1366.25. (a) Every group contract between a health care
18 service plan and an employer subject to this article that is issued,
19 amended, or renewed on or after July 1, 1998, shall require the
20 employer to notify the plan, in writing, of any employee who has
21 had a qualifying event, as defined in paragraph (2) of subdivision
22 (d) of Section 1366.21, within 30 days of the qualifying event. The
23 group contract shall also require the employer to notify the plan,
24 in writing, within 30 days of the date, when the employer becomes
25 subject to Section 4980B of the United States Internal Revenue
26 Code or Chapter 18 of the Employee Retirement Income Security
27 Act, 29 U.S.C. Sec. 1161 et seq.

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

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

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

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

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

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

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

19 (g) (1) A health care service plan shall provide to a qualified
20 beneficiary who has a qualifying event between September 1,
21 2008, and December 31, 2009, inclusive, a written notice
22 containing information on the availability of premium assistance
23 under Title III of Division B of the American Recovery and
24 Reinvestment Act of 2009 (Public Law 111-5). This notice shall
25 be sent to the qualified beneficiary's last known address. The notice
26 shall include clear and easily understandable language to inform
27 the qualified beneficiary that changes in federal law provide a new
28 opportunity to elect continuation coverage with a 65-percent
29 premium subsidy and shall include all of the following:

30 (A) The amount of the premium the person will pay. For
31 qualified beneficiaries who had a qualifying event between
32 September 1, 2008, and the effective date of this subdivision,
33 inclusive, if a health care service plan is unable to provide the
34 correct premium amount in the notice, the notice may contain the
35 last known premium amount and an opportunity for the qualified
36 beneficiary to request, through a toll-free telephone number, the
37 correct premium that would apply to the beneficiary.

38 (B) Enrollment forms and any other information required to be
39 included pursuant to subdivision (e) to allow the qualified
40 beneficiary to elect continuation coverage. This information shall

1 not be included in notices sent to qualified beneficiaries currently
2 enrolled in continuation coverage.

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

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

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

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

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

31 (H) A statement that reads as follows:

32
33 IF YOU ARE HAVING ANY DIFFICULTIES READING OR
34 UNDERSTANDING THIS NOTICE, PLEASE CONTACT [name
35 of health plan] at [insert appropriate telephone number].
36

37 (2) With respect to qualified beneficiaries who had a qualifying
38 event between September 1, 2008, and the effective date of this
39 subdivision, inclusive, the notice described in this subdivision
40 shall be provided within ~~14~~ *the later of 14 calendar* days of the

1 effective date of this subdivision *or seven business days after the*
2 *date the plan receives notice of the qualifying event.*

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

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

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

24 (h) (1) Notwithstanding any other provision of law, a qualified
25 beneficiary eligible for premium assistance under Title III of
26 Division B of the American Recovery and Reinvestment Act of
27 2009 (Public Law 111-5) may elect continuation coverage no later
28 than 60 days after the date of the notice required by subdivision
29 (g).

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

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

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

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

10 (A) The date of the qualifying event.

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

12 (i) Notwithstanding any other provision of law, a qualified
13 beneficiary eligible for premium assistance under Title III of
14 Division B of the American Recovery and Reinvestment Act of
15 2009 (Public Law 111-5) may elect to enroll in different coverage
16 subject to the criteria provided under subparagraph (B) of paragraph
17 (1) of subdivision (a) of Section 3001 of Title III of Division B of
18 the American Recovery and Reinvestment Act of 2009 (Public
19 Law 111-5).

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

27 (k) A health care service plan that receives an election notice
28 from a qualified beneficiary eligible for premium assistance under
29 Title III of Division B of the American Recovery and Reinvestment
30 Act of 2009 (Public Law 111-5), pursuant to subdivision (h), shall
31 be considered a person entitled to reimbursement, as defined in
32 Section 6432(b)(3) of the Internal Revenue Code, as amended by
33 paragraph (12) of subdivision (a) of Section 3001 of Title III of
34 Division B of the American Recovery and Reinvestment Act of
35 2009 (Public Law 111-5).

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

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

7 (2) A health care service plan that requests verification pursuant
8 to paragraph (1) directly from a covered employee's former
9 employer shall do so by providing a written notice to the employer.
10 ~~For a qualified beneficiary who became eligible for continuation~~
11 ~~coverage prior to the effective date of this subdivision, this written~~
12 ~~This written~~ notice shall be sent by ~~certified mail~~ *mail or facsimile*
13 to the covered employee's former employer within ~~three~~ *seven*
14 business days from the date the plan receives the qualified
15 beneficiary's election notice pursuant to subdivision (h). Within
16 10 calendar days of receipt of written notice required by this
17 paragraph, the former employer shall furnish to the health care
18 service plan written verification as to whether the covered
19 employee's employment was involuntarily terminated.

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

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

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

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

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

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

17 10128.50. (a) This article shall be known as the California
18 Continuation Benefits Replacement Act, or "Cal-COBRA."

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

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

28 (d) The commissioner, in consultation with the Director of the
29 Department of Managed Health Care, may adopt emergency
30 regulations to implement this article in accordance with Chapter
31 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
32 Title 2 of the Government Code by making a finding of emergency
33 and demonstrating the need for immediate action in the event that
34 any federal assistance is or becomes available to qualified
35 beneficiaries under this article. The adoption of these regulations
36 shall be considered by the Office of Administrative Law to be
37 necessary to avoid serious harm to the public peace, health, safety,
38 or general welfare. Any regulations adopted pursuant to this
39 subdivision shall be substantially similar to those adopted by the

1 Director of the Department of Managed Health Care under
2 subdivision (d) of Section 1366.20 of the Health and Safety Code.

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

5 10128.51. (a) “Continuation coverage” means extended
6 coverage under the group benefit plan under which an eligible
7 employee or eligible dependent is currently covered, or, in the case
8 of a termination of the group benefit plan or an employer open
9 enrollment period, extended coverage under the group benefit plan
10 currently offered by the employer.

11 (b) “Group benefit plan” has the same meaning as “health benefit
12 plan” defined in Section 10700, including group policies of
13 vision-only and dental-only coverage, provided pursuant to Chapter
14 8 (commencing with Section 10700) to an employer with 2 to 19
15 eligible employees, as defined in Section 10700.

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

21 (2) “Qualified beneficiary eligible for premium assistance under
22 Title III of Division B of the American Recovery and Reinvestment
23 Act of 2009 (Public Law 111-5)” means a qualified beneficiary,
24 as defined in paragraph (1), who (A) was or is eligible for
25 continuation coverage as a result of the involuntary termination
26 of the covered employee’s employment during the period that
27 begins with September 1, 2008, and ends with December 31, 2009,
28 (B) elects continuation coverage, and (C) meets the definition of
29 “qualified beneficiary” set forth in paragraph (3) of Section 1167
30 of Title 29 of the United States Code, as used in subparagraph (E)
31 of paragraph (1) of subdivision (a) of Section 3001 of Title III of
32 Division B of the American Recovery and Reinvestment Act of
33 2009 (Public Law 111-5) or any subsequent rules or regulations
34 issued pursuant to that law.

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

39 (1) The death of the covered employee.

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

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

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

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

11 (e) "Employer" means any employer that meets the definition
12 of "small employer" as set forth in Section 10700 and (1) employed
13 2 to 19 eligible employees on at least 50 percent of its working
14 days during the preceding calendar year, or, if the employer was
15 not in business during any part of the preceding calendar year,
16 employed 2 to 19 eligible employees on at least 50 percent of its
17 working days during the preceding calendar quarter, (2) has
18 contracted for health care coverage through a group benefit plan
19 offered by a disability insurer, and (3) is not subject to Section
20 4980B of the United States Internal Revenue Code or Chapter 18
21 of the Employee Retirement Income Security Act, 29 U.S.C.
22 Section 1161 et seq.

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

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

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

31 10128.52. The continuation coverage requirements of this
32 article do not apply to the following individuals:

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

38 (b) Individuals who have other hospital, medical, or surgical
39 coverage, or who are covered or become covered under another
40 group benefit plan, including a self-insured employee welfare

1 benefit plan, that provides coverage for individuals and that does
2 not impose any exclusion or limitation with respect to any
3 preexisting condition of the individual, other than a preexisting
4 condition limitation or exclusion that does not apply to or is
5 satisfied by the qualified beneficiary pursuant to Sections 10198.6
6 and 10198.7. A group conversion option under any group benefit
7 plan shall not be considered as an arrangement under which an
8 individual is or becomes covered.

9 (c) Individuals who are covered, become covered, or are eligible
10 for federal COBRA coverage pursuant to Section 4980B of the
11 United States Internal Revenue Code or Chapter 18 of the
12 Employee Retirement Income Security Act, 29 U.S.C. Section
13 1161 et seq.

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

17 (e) Qualified beneficiaries who fail to meet the requirements of
18 subdivision (b) of Section 10128.54 or subdivision (h) of Section
19 10128.55 regarding notification of a qualifying event or election
20 of continuation coverage within the specified time limits.

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

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

28 10128.55. (a) Every group benefit plan contract between a
29 disability insurer and an employer subject to this article that is
30 issued, amended, or renewed on or after July 1, 1998, shall require
31 the employer to notify the insurer in writing of any employee who
32 has had a qualifying event, as defined in paragraph (2) of
33 subdivision (d) of Section 10128.51, within 30 days of the
34 qualifying event. The group contract shall also require the employer
35 to notify the insurer, in writing, within 30 days of the date when
36 the employer becomes subject to Section 4980B of the United
37 States Internal Revenue Code or Chapter 18 of the Employee
38 Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

39 (b) Every group benefit plan contract between a disability insurer
40 and an employer subject to this article that is issued, amended, or

1 renewed after July 1, 1998, shall require the employer to notify
2 qualified beneficiaries currently receiving continuation coverage,
3 whose continuation coverage will terminate under one group
4 benefit plan prior to the end of the period the qualified beneficiary
5 would have remained covered, as specified in Section 10128.57,
6 of the qualified beneficiary's ability to continue coverage under a
7 new group benefit plan for the balance of the period the qualified
8 beneficiary would have remained covered under the prior group
9 benefit plan. This notice shall be provided either 30 days prior to
10 the termination or when all enrolled employees are notified,
11 whichever is later.

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

18 (c) Notwithstanding subdivision (a), the group benefit plan
19 contract between the insurer and the employer shall require the
20 employer to notify the successor plan in writing of the qualified
21 beneficiaries currently receiving continuation coverage so that the
22 successor plan, or contracting employer or administrator, may
23 provide those qualified beneficiaries with the necessary premium
24 information, enrollment forms, and instructions consistent with
25 the disclosure required by subdivision (c) of Section 10128.54 and
26 subdivision (e) of this section to allow the qualified beneficiary to
27 continue coverage. This information shall be sent to all qualified
28 beneficiaries who are enrolled in the group benefit plan and those
29 qualified beneficiaries who have been notified, pursuant to Section
30 10128.54 of their ability to continue their coverage and may still
31 elect coverage within the specified 60-day period. This information
32 shall be sent to the qualified beneficiary's last known address, as
33 provided to the employer by the health care service plan or,
34 disability insurer currently providing continuation coverage to the
35 qualified beneficiary. The successor insurer shall not be obligated
36 to provide this information to qualified beneficiaries if the
37 employer or prior insurer or health care service plan fails to comply
38 with this section.

39 (d) A disability insurer may contract with an employer, or an
40 administrator, to perform the administrative obligations of the plan

1 as required by this article, including required notifications and
2 collecting and forwarding premiums to the insurer. Except for the
3 requirements of subdivisions (a), (b), and (c), this subdivision shall
4 not be construed to permit an insurer to require an employer to
5 perform the administrative obligations of the insurer as required
6 by this article as a condition of the issuance or renewal of coverage.

7 (e) Every insurer, or employer or administrator that contracts
8 to perform the notice and administrative services pursuant to this
9 section, shall, within 14 days of receiving a notice of a qualifying
10 event, provide to the qualified beneficiary the necessary premium
11 information, enrollment forms, and disclosures consistent with the
12 notice requirements contained in subdivisions (b) and (c) of Section
13 10128.54 to allow the qualified beneficiary to formally elect
14 continuation coverage. This information shall be sent to the
15 qualified beneficiary's last known address.

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

28 (g) (1) An insurer shall provide to a qualified beneficiary who
29 has a qualifying event between September 1, 2008, and December
30 31, 2009, inclusive, a written notice containing information on the
31 availability of premium assistance under Title III of Division B of
32 the American Recovery and Reinvestment Act of 2009 (Public
33 Law 111-5). This notice shall be sent to the qualified beneficiary's
34 last known address. The notice shall include clear and easily
35 understandable language to inform the qualified beneficiary that
36 changes in federal law provide a new opportunity to elect
37 continuation coverage with a 65-percent premium subsidy and
38 shall include all of the following:

39 (A) The amount of the premium the person will pay. For
40 qualified beneficiaries who had a qualifying event between

1 September 1, 2008, and the effective date of this subdivision,
2 inclusive, if an insurer is unable to provide the correct premium
3 amount in the notice, the notice may contain the last known
4 premium amount and an opportunity for the qualified beneficiary
5 to request, through a toll-free telephone number, the correct
6 premium that would apply to the beneficiary.

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

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

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

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

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

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

40 (H) A statement that reads as follows:

1
2 IF YOU ARE HAVING ANY DIFFICULTIES READING OR
3 UNDERSTANDING THIS NOTICE, PLEASE CONTACT [name
4 of insurer] at [insert appropriate telephone number].
5

6 (2) With respect to qualified beneficiaries who had a qualifying
7 event between September 1, 2008, and the effective date of this
8 subdivision, inclusive, the notice described in this subdivision
9 shall be provided within ~~14~~ *the later of 14 calendar* days of the
10 effective date of this subdivision *or seven business days after the*
11 *date the insurer receives notice of the qualifying event.*

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

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

24 (h) (1) Notwithstanding any other provision of law, a qualified
25 beneficiary eligible for premium assistance under Title III of
26 Division B of the American Recovery and Reinvestment Act of
27 2009 (Public Law 111-5) may elect continuation coverage no later
28 than 60 days after the date of the notice required by subdivision
29 (g).

30 (2) For a qualified beneficiary who elects to continue coverage
31 pursuant to paragraph (1), the period beginning on the date of the
32 qualifying event and ending on the effective date of the
33 continuation coverage shall be disregarded for purposes of
34 calculating a break in coverage in determining whether a
35 preexisting condition provision applies under subdivision (e) of
36 Section 10198.7 or subdivision (c) of Section 10708.

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

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

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

10 (A) The date of the qualifying event.

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

12 (i) Notwithstanding any other provision of law, a qualified
13 beneficiary eligible for premium assistance under Title III of
14 Division B of the American Recovery and Reinvestment Act of
15 2009 (Public Law 111-5) may elect to enroll in different coverage
16 subject to the criteria provided under subparagraph (B) of paragraph
17 (1) of subdivision (a) of Section 3001 of Title III of Division B of
18 the American Recovery and Reinvestment Act of 2009 (Public
19 Law 111-5).

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

27 (k) An insurer that receives an election notice from a qualified
28 beneficiary eligible for premium assistance under Title III of
29 Division B of the American Recovery and Reinvestment Act of
30 2009 (Public Law 111-5), pursuant to subdivision (h), shall be
31 considered a person entitled to reimbursement, as defined in
32 Section 6432(b)(3) of the Internal Revenue Code, as amended by
33 paragraph (12) of subdivision (a) of Section 3001 of Title III of
34 Division B of the American Recovery and Reinvestment Act of
35 2009 (Public Law 111-5).

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

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

7 (2) An insurer that requests verification pursuant to paragraph
8 (1) directly from a covered employee's former employer shall do
9 so by providing a written notice to the employer. ~~For a qualified~~
10 ~~beneficiary who became eligible for continuation coverage prior~~
11 ~~to the effective date of this subdivision, this written notice shall~~
12 ~~be~~ *This written notice shall be sent by certified mail or*
13 *facsimile* to the covered employee's former employer within ~~three~~
14 ~~seven~~ business days from the date the insurer receives the qualified
15 beneficiary's election notice pursuant to subdivision (h). Within
16 10 calendar days of receipt of written notice required by this
17 paragraph, the former employer shall furnish to the insurer written
18 verification as to whether the covered employee's employment
19 was involuntarily terminated.

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

33 (4) If an insurer requests verification pursuant to this subdivision
34 and cannot verify involuntary termination of employment within
35 14 business days from the date the employer receives the
36 verification request or from date the insurer receives documentation
37 or other information from the qualified beneficiary pursuant to
38 paragraph (3), the insurer shall either provide continuation coverage
39 with the federal premium assistance to the qualified beneficiary
40 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.

CORRECTIONS:

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