

CHAPTER 246  
FORMERLY  
HOUSE BILL NO. 170  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO GROUP AND BLANKET  
HEALTH INSURANCE REQUIRING INSURERS TO OFFER TO OTHERWISE-ELIGIBLE EMPLOYEES  
MINI-COBRA COVERAGE IN SMALL-EMPLOYER PLANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 35, Title 18 of the Delaware Code by adding new section 3571E. to read as follows:  
“§ 3571E. Mini-cobra small employer group health policies.

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

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

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

(1) Is covered or eligible for coverage under Medicare;

(2) Fails to verify that such person is ineligible for employer-based group health insurance as an eligible dependent; or

(3) Is or could be covered by any other insured or uninsured arrangement which provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to such termination, excluding the medical assistance program established under Delaware Code.

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

(d) (1) The group policy shall provide notice to the policyholder of the rights provided under this section. Unless already provided in the group policy, an insurer who has issued a group policy in effect as of the effective date of this section shall provide such notice to the policyholder within forty-five (45) days of the effective date.

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

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

(4) An administrator or its designee notified undersection (iii) of an election of continuation coverage shall notify the insurer within fourteen (14) days of the covered employee's or eligible dependent's election.

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

(e)(1) The covered employee or eligible dependent requesting the continuation of coverage must pay to the administrator or its designee, on a monthly basis, the amount of contribution required to be paid by the covered employee or eligible dependent to continue the coverage.

(2) The premium contribution may not be more than one-hundred and two percent (102%) of the group rate of the insurance being continued on the due date of each payment.

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

(f) (1) Continuation of coverage under the group policy for any covered employee or eligible dependent shall terminate upon failure to satisfy § 3571E(b) or, if earlier, at the first to occur of the following:

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

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

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

(2) A covered employee or eligible dependent shall provide written notice to the administrator or its designee within fourteen (14) days if, pursuant to § 3571E(b), coverage should not occur.

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

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

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

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

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

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

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

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

3. "Eligible dependent" means:

(i) With respect to a covered employee under a group health plan, any other individual who on the day before the qualifying event for that employee is a beneficiary under the plan:

(aa) As the spouse of the covered employee; or

(bb) As the dependent child of the employee.

(ii) In the case of a qualifying event described in §3571E(f)(2)(d).(6.) (ii), the term includes a covered employee.

(iii) In the case of a qualifying event described in §3571E(f)(2)(d).(6.) (vi), the term includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan:

(aa) As the spouse of the covered employee;

(bb) As the dependent child of the employee; or

(cc) As the surviving spouse of the covered employee, the term shall also include a child who is born to or placed for adoption with a covered employee during the period of continuation coverage under this section.

4. "Group policy" means any group health insurance policy, subscriber contract, certificate or plan which provides health or sickness and accident coverage which is offered by an insurer. The term shall not include any of the following:

(i) An accident-only policy.

(ii) A credit-only policy.

(iii) A long-term care or disability income policy.

(iv) A specified disease policy.

(v) A Medicare supplement policy.

(vi) A civilian health and medical program of the uniformed services (champus) supplement policy.

(vii) A fixed indemnity policy.

(viii) A dental-only policy.

(ix) A vision-only policy.

(x) A workers' compensation policy.

(xi) An automobile medical payment policy under Chapter 21, Title 18 of the Delaware Code.

(xii) Any other similar policies providing for limited benefits.

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

6. "Qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation of coverage required under this section, would result in the loss of coverage of an eligible dependent:

(i) The death of a covered employee.

(ii) The termination, other than by reason of such employee's gross misconduct, or reduction of hours of the covered employee's employment.

(iii) The divorce or legal separation of the covered employee from an eligible dependent.

(iv) The covered employee becoming entitled to benefits under Title xviii of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395, *et seq.*).

(v) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(vi) A proceeding in a case under Chapter 11 of Title 11 of the United States Code with respect to the employer from whose employment the covered employee retired at any time. In the case of an event described in this subparagraph, a loss of coverage includes a substantial elimination of coverage with respect to an eligible dependent within one (1) year before or after the date of commencement of the proceeding.

Section 2. This Act shall take effect within 30 days of its enactment and shall expire on January 1, 2014.

Approved May 22, 2012