

§ 1366.24. Disclosures

(a) Every health care service plan evidence of coverage, provided for group benefit plans subject to this article, that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

(b) This disclosure shall state that all enrollees who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 1366.21, shall be required, as a condition of receiving benefits pursuant to this article, to notify, in writing, the health care service plan, or the employer if the employer contracts to perform the administrative services as provided for in Section 1366.25, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 1366.21 within 60 days of the date of the qualifying event. This disclosure shall inform enrollees that failure to make the notification to the health care service plan, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver the written request, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 1366.25, within the 60-day period following the later of (1) the date that the enrollee's coverage under the group benefit plan terminated or will terminate by reason of a qualifying event, or (2) the date the enrollee was sent notice pursuant to subdivision (e) of Section 1366.25 of the ability to continue coverage under the group benefit plan. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the health care service plan, in accordance with the terms and conditions of the plan contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 1366.25, the amount of the required premium payment, as set forth in Section 1366.26. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by first-class mail, certified mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the employer has contracted with the plan to perform the administrative services pursuant to subdivision (d) of Section 1366.25, within 45 days of the date the qualified beneficiary provided written notice to the health care service plan or the employer, if the employer has contracted to perform the administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay any required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to subdivision (b) of Section 1366.27 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Prior to August 1, 1998, every health care service plan shall provide to all covered employees of employers subject to this article a written notice containing the disclosures required by this section, or shall provide to all covered employees of employers subject to this section a new or amended evidence of coverage that includes the disclosures required by this section. Any specialized health care service plan that, in the ordinary course of business, maintains only the addresses of employer group purchasers of benefits and does not maintain addresses of covered employees, may comply with the notice requirements of this section through the provision of the notices to its employer group purchasers of benefits.

(e) Every plan disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an enrollee may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the plan's evidence of coverage.

(f) Every disclosure issued, amended, or renewed on and after July 1, 2006, for a group benefit plan subject to this article shall include the following notice:

"Please examine your options carefully before declining this coverage. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

HISTORY:

Added Stats 1997 ch 665 § 1 (SB 719).
Amended Stats 1998 ch 107 § 8.5 (AB 112),

effective July 6, 1998; Stats 2005 ch 526 § 2 (AB 356), effective January 1, 2006.

§ 1366.25. Notification requirements; Contract with employer or administrator to perform administrative obligation; Coverage under American Recovery and Reinvestment Act of 2009

(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 during the period specified in subparagraph (A) of paragraph (3) of subdivision (a) of Section 3001 of ARRA, a written notice containing information on the availability of premium assistance under ARRA. This notice shall be sent to the qualified beneficiary's last known address. The notice shall include 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 May 12, 2009, 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 ARRA. 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 ARRA.

(E) The duration of premium assistance available under ARRA.

(F) A statement that a qualified beneficiary eligible for premium assistance under ARRA 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 ARRA who 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 May 12, 2009, inclusive, the notice

described in this subdivision shall be provided by the later of May 26, 2009, or seven business days after the date the plan receives notice of the qualifying event.

(3) With respect to qualified beneficiaries who had or have a qualifying event between May 13, 2009, and the later date specified in subparagraph (A) of paragraph (3) of subdivision (a) of Section 3001 of ARRA, inclusive, the notice described in this subdivision shall be provided within the period of time specified in subdivision (e).

(4) 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, 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 enactment of Assembly Bill 23 of the 2009-10 Regular Session or by the act amending this section during the second year of the 2009-10 Regular Session.

(5) The requirement under this subdivision to provide a written notice to a qualified beneficiary and the requirement under paragraph (1) of subdivision (h) to provide a new opportunity to a qualified beneficiary to elect continuation coverage shall be deemed satisfied if a health care service plan previously provided a written notice and additional election opportunity under Section 3001 of ARRA to that qualified beneficiary prior to the effective date of the act adding this paragraph.

(h)(1) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under ARRA 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 this subdivision, 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 May 12, 2009, 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.

(5) Notwithstanding any other provision of law, a qualified beneficiary who is eligible for the special election opportunity described in paragraph (17) of subdivision (a) of Section 3001 of ARRA may elect continuation coverage no later than 60 days after the date of the notice required under subdivision (j). For a qualified beneficiary who elects coverage pursuant to this paragraph, the continuation coverage shall be effective as of the first day

of the first period of coverage after the date of termination of employment, except, if federal law permits, coverage shall take effect on the first day of the month following the election. However, for purposes of calculating the duration of continuation coverage pursuant to Section 1366.27, the period of that coverage shall be determined as though the qualifying event was a reduction of hours of the employee.

(6) Notwithstanding any other provision of law, a qualified beneficiary who is eligible for any other special election opportunity under ARRA may elect continuation coverage no later than 60 days after the date of the special election notice required under ARRA.

(i) A health care service plan shall provide a qualified beneficiary eligible for premium assistance under ARRA written notice of the extension of that premium assistance as required under Section 3001 of ARRA.

(j) A health care service plan, or an administrator or employer if administrative obligations have been assumed by those entities pursuant to subdivision (d), shall give the qualified beneficiaries described in subparagraph (C) of paragraph (17) of subdivision (a) of Section 3001 of ARRA the written notice required by that paragraph by implementing the following procedures:

(1) The health care service plan shall, within 14 days of the effective date of the act adding this subdivision, send a notice to employers currently contracting with the health care service plan for a group benefit plan subject to this article. The notice shall do all of the following:

(A) Advise the employer that employees whose employment is terminated on or after March 2, 2010, who were previously enrolled in any group health care service plan or health insurance policy offered by the employer may be entitled to special health coverage rights, including a subsidy paid by the federal government for a portion of the premium.

(B) Ask the employer to provide the health care service plan with the name, address, and date of termination of employment for any employee whose employment is terminated on or after March 2, 2010, and who was at any time covered by any health care service plan or health insurance policy offered to their employees on or after September 1, 2008.

(C) Provide employers with a format and instructions for submitting the information to the health care service plan, or their administrator or employer who has assumed administrative obligations pursuant to subdivision (d), by telephone, fax, electronic mail, or mail.

(2) Within 14 days of receipt of the information specified in paragraph (1) from the employer, the health care service plan shall send the written notice specified in paragraph (17) of subdivision (a) of Section 3001 of ARRA to those individuals.

(3) If an individual contacts his or her health care service plan and indicates that he or she experienced a qualifying event that entitles him or her to the special election period described in paragraph (17) of subdivision (a) of Section 3001 of ARRA or any other special election provision of ARRA, the plan shall provide the individual with the written notice required under paragraph (17) of subdivision (a) of Section 3001 of ARRA or any other applicable provision of ARRA, regardless of whether the plan receives information from the individual's previous employer regarding that individual pursuant to Section 24100. The plan shall review the individual's

application for coverage under this special election notice to determine if the individual qualifies for the special election period and the premium assistance under ARRA. The plan shall comply with paragraph (5) if the individual does not qualify for either the special election period or premium assistance under ARRA.

(4) The requirement under this subdivision to provide the written notice described in paragraph (17) of subdivision (a) of Section 3001 of ARRA to a qualified beneficiary and the requirement under paragraph (5) of subdivision (h) to provide a new opportunity to a qualified beneficiary to elect continuation coverage shall be deemed satisfied if a health care service plan previously provided the written notice and additional election opportunity described in paragraph (17) of subdivision (a) of Section 3001 of ARRA to that qualified beneficiary prior to the effective date of the act adding this paragraph.

(5) If an individual does not qualify for either a special election period or the premium assistance under ARRA, the health care service plan shall provide a written notice to that individual that shall include information on the right to appeal as set forth in Section 3001 of ARRA.

(6) A health care service plan shall provide information on its publicly accessible Internet Web site regarding the premium assistance made available under ARRA and any special election period provided under that law. A plan may fulfill this requirement by linking or otherwise directing consumers to the information regarding COBRA continuation coverage premium assistance located on the Internet Web site of the United States Department of Labor. The information required by this paragraph shall be located in a section of the plan's Internet Web site that is readily accessible to consumers, such as the Web site's Frequently Asked Questions section.

(k) For purposes of implementing federal premium assistance for continuation coverage, 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 of 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).

(l) Notwithstanding any other provision of law, a qualified beneficiary eligible for premium assistance under ARRA 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 ARRA.

(m) A qualified beneficiary enrolled in continuation coverage as of February 17, 2009, who is eligible for premium assistance under ARRA may request application of the premium assistance as of March 1, 2009, or later, consistent with ARRA.

(n) A health care service plan that receives an election notice from a qualified beneficiary eligible for premium assistance under ARRA, 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 ARRA.

(o)(1) For purposes of compliance with ARRA, 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 ARRA.

(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. This written notice shall be sent by mail or facsimile to the covered employee's former employer within seven 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 ARRA 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 ARRA, 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 ARRA.

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

(p) The provision of information and forms related to the premium assistance available pursuant to ARRA to individuals by a health care service plan shall not be considered a violation of this chapter provided that the plan complies with all of the requirements of this article.

HISTORY:

Added Stats 1997 ch 665 § 1 (SB 719).
Amended Stats 1998 ch 107 § 9 (AB 112),

effective July 6, 1998; Stats 2009 ch 3 § 4 (AB 23), effective May 12, 2009; Stats 2010 ch 24 § 3 (SB 838), effective June 3, 2010.