Issue BRIEF

Protecting Unemployed Workers' Health Coverage: What States Can Do

January 2009

Introduction

In December 2008, the unemployment rate reached 7.2 percent, the highest monthly unemployment rate in the last 15 years.[1] With each 1 percent rise in the nation's unemployment rate, the number of uninsured Americans is projected to increase by 1.1 percent. For unemployed workers and their families, lack of insurance causes major problems. Workers and their families may be unable to get needed medical care; and when they do get care, they may face devastating medical debt. Protecting unemployed workers from these consequences will require federal as well as state intervention. States can play an important role by regulating health insurance—they can set standards for when insurers must make coverage available to people who lose their jobs and how much insurers are allowed to charge for that coverage. States and the federal government should subsidize coverage for unemployed workers or directly cover them by expanding Medicaid and other public programs.

At the federal level, two major laws help to protect consumers when they lose job-based coverage: COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) and HIPAA (the Health Insurance Portability and Accountability Act of 1996).

- **COBRA** helps people in firms with 20 or more employees (leaving states with the task of protecting people in smaller firms) to maintain health coverage after leaving their employer or losing their job. In general, COBRA requires that most employers allow former workers to remain in the employer's group plan for 18 months (if the employer continues to offer the plan). The former employees have to pay the full cost and up to a 2 percent administrative fee. If they can afford these costs, workers may continue health coverage not merely for themselves, but for their family members as well.

  Some people can receive more than 18 months of coverage. For example, if a worker became entitled to Medicare before leaving a job, his or her family members may be able to continue receiving coverage through the employer's plan for up to 36 months. Or, if a person qualifies for Social Security disability benefits before or shortly after leaving a job, he or she can keep COBRA for an extended period while waiting for Medicare benefits. Unfortunately for people with disabilities who are waiting for Medicare coverage, COBRA premiums can increase to 150 percent of previous charges during the extension period.[2]

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- HIPAA includes two kinds of protections for people who lose job-based coverage. First, it gives them a 30-day window to enroll in a policy offered by their spouse's employer, if one is available. Second, it allows some people who lose their jobs to buy policies in the individual health insurance market without pre-existing condition exclusions. To qualify for this second protection, people must meet the following criteria:
  1. They must have had 18 months of coverage without a break of 63 days or more;
  2. They must have used up any COBRA or state continuation rights;
  3. The last day of coverage must have been through a job-based plan;
  4. They must not be eligible for Medicare, Medicaid, or a job-based plan; and
  5. They cannot have lost coverage due to failure to pay premiums or insurance fraud.

  Not all individual insurance plans have to accept people who are HIPAA-eligible: States determine which insurers will provide coverage to HIPAA-eligibles and how much they can charge in premiums.[3]

A third federal law helps a smaller group of people. People who lose jobs due to trade policy—for example, due to increased imports or jobs moving overseas—may be eligible for the federal Health Coverage Tax Credit (HCTC) under the Trade Adjustment Act. The federal Health Coverage Tax Credit pays 65 percent of health insurance premiums. People receiving the credit may elect either to get money back at the end of the year when they file their taxes or to receive it on an "advanceable" basis—that is, the Internal Revenue Service pays a portion of the person's premiums directly to the health plan on a monthly basis. However, the tax credit is underused due to a number of hurdles—it is complex to enroll in; people may need to pay full premiums for several months while they wait for assistance to begin; and even with assistance, many people cannot afford the remaining share of their premiums.[4]

During these hard economic times, states can take several steps to provide protections for people who are left out of federal COBRA protections and to bolster COBRA and HIPAA to better help the unemployed uninsured maintain their health coverage. See Table 1 and the following discussion for more information.

Table 1

Recommendations for State Action to Help the Unemployed Uninsured

Definitions

Mini-COBRA laws: State laws that allow people leaving jobs in small businesses to continue their coverage, similar to the right afforded workers in larger businesses under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); HIPAA: The Health Insurance Portability and Accountability Act of 1996; HCTC: The federal Health Coverage Tax Credit.

Alabama
- Enact mini-COBRA laws
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Alaska
- Enact mini-COBRA laws
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Arizona
- Enact mini-COBRA laws
- Enact group conversion laws
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Arkansas
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

California
- Lower COBRA expansion premiums
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Colorado
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Connecticut
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Delaware
- Enact mini-COBRA laws
- Enact group conversion laws
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

District of Columbia
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Florida
- Lower COBRA expansion premiums
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Georgia
- Extend periods of coverage for people leaving small firms
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Hawaii
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Idaho
- Enact mini-COBRA laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Illinois
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Indiana
- Enact mini-COBRA laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Iowa
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Table 1 (continued)
Recommendations for State Action to Help the Unemployed Uninsured

Kansas
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Kentucky
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Louisiana
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Maine
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Maryland
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Massachusetts
- Help people obtain HCTC

Michigan
- Enact mini-COBRA laws
- Limit conversion premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Minnesota
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Mississippi
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Missouri
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Montana
- Enact mini-COBRA laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Nebraska
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Nevada
- Lower COBRA expansion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

New Hampshire
- Lower conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

New Jersey
- Help people obtain HCTC
- Expand conversion rights
- Subsidize or provide coverage through Medicaid or other programs

New Mexico
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

New York
- Limit conversion premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

North Carolina
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Table 1 (continued)
Recommendations for State Action to Help the Unemployed Uninsured

North Dakota
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Ohio
- Extend periods of coverage for people leaving small firms
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Oklahoma
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Oregon
- Extend periods of coverage for people leaving small firms
- Enact group conversion laws
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Pennsylvania
- Enact mini-COBRA laws
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Rhode Island
- Limit conversion premiums
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

South Carolina
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums and expand coversion rights
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

South Dakota
- Limit conversion premiums and expand coversion rights
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Tennessee
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums

Tennessee (continued)
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Texas
- Enact group conversion laws
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Utah
- Extend periods of coverage for people leaving small firms
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Vermont
- Extend periods of coverage for people leaving small firms
- Limit conversion premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Virginia
- Enact mini-COBRA laws
- Enact group conversion laws
- Limit HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Washington
- Enact mini-COBRA laws
- Lower conversion premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

West Virginia
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Wisconsin
- Limit conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Wyoming
- Extend periods of coverage for people leaving small firms
- Lower conversion premiums
- Lower HIPAA premiums
- Help people obtain HCTC
- Subsidize or provide coverage through Medicaid or other programs

Discussion: What States Can Do

- **Enact "mini-COBRA" laws, allowing people in businesses with two to 19 workers to maintain their group health coverage when they leave their job.**

  COBRA covers workers from businesses with 20 or more employees only. State laws for workers leaving small businesses are similar to the federal COBRA law, but they extend coverage to employees at businesses with 19 or fewer workers. Thirty-eight states and the District of Columbia have such laws, but even in many of these states, there is room for improvement. State mini-COBRA laws should:

  - **Help people maintain their coverage for as long as possible**. People in larger firms are guaranteed 18 months of coverage under COBRA.[5] However, in some states with mini-COBRA laws, people in small firms are guaranteed only short periods of continued coverage when they leave their jobs. As of 2007 (when national data were last compiled), in 11 states and the District of Columbia, unemployed workers from small firms could continue their coverage only for periods of six months or fewer (three months in the District of Columbia, Georgia, and Hawaii; four months in Arkansas; and six months in Kansas, New Mexico, Oklahoma, Oregon, and South Carolina) (seeTable 2a).
  - **Ensure that people receive all of the benefits that they did under their former policy.** Some state mini-COBRA laws allow insurers to offer more limited benefit packages during the continuation period; for example, policies may exclude coverage for necessary benefits, such as prescription drugs.
  - **Keep premium prices for continued coverage as low as possible.** Under COBRA, people leaving jobs in larger firms pay their own share of premiums, their former employer's share, and up to a 2 percent administrative fee—that is, they pay up to 102 percent of the full premium cost. However, in three states—California, Florida, and Nevada—the price for continuing coverage in a small group plan is even higher (see Table 2a).
- **Enact conversion laws that allow people whose former employers have gone out of business or have stopped offering coverage to buy a policy in the individual health insurance market from the same insurer without pre-existing condition limitations.** These laws should:
  - **Ensure that people can get the same benefits that they did under their former policy.** Some states allow insurers to sell conversion policies that do not cover important benefits, such as prescription drugs.
  - **Keep premiums for conversion policies at reasonable rates**. In some states, there are no limits to how much an insurer can charge for a conversion policy, so premiums may be much higher than those in the former job-based plan (see Table 2b).

	Table 2A: Expanded COBRA Continuation Coverage for Small Firm Employees, 2007			Table 2B: State Conversion Coverage For Small Firm Employees, 2007	
State	State COBRA Expansion?	Maximum Duration Of Continuation Coverage (months)	Rating Restrictions? Percentage of Group Rate	Mandatory Group Conversion?	Rating Limits?
Alabama	No	na [1]	na	No	na
Alaska	No	na [1]	na	No	na
Arizona	No	na [1]	na	No [1]	No
Arkansas	Yes	4	100%	Yes	No
California	Yes	36	110%	Yes	No
Colorado	Yes	18	100%	Yes	No
Connecticut	Yes	36	102%	Yes [2]	Yes
Delaware	No	na [1]	na	No	na
District of Columbia	Yes	3	102%	Yes [3]	No
Florida	Yes	29	115%	Yes	Yes
Georgia	Yes	3	100%	Yes	Yes
Hawaii	Yes	3	100%	No	na
Idaho	No	na [1, 2]	na	Yes	Yes
Illinois	Yes	24 [3, 4]	100%	Yes	No
Indiana	No	na [1]	na	Yes [4]	Yes
Iowa	Yes	9 [4]	100%	Yes	No
Kansas	Yes	6	100%	Yes	No
Kentucky	Yes	18	100%	Yes	No
Louisiana	Yes	12 [3]	100%	No	na
Maine	Yes	12	102%	No	na
Maryland	Yes	18 [3]	102%	Yes	No
Massachusetts	Yes	36	102%	No	na
Michigan	No	na [1]	na	Yes	No
Minnesota	Yes	36	102%	Yes	Yes
Mississippi	Yes	12 [4]	100%	No	na
Missouri	Yes	9 [3]	100%	Yes	No
Montana	No	na [1]	na	Yes	Yes
Nebraska	Yes	12	102%	No	na
Nevada	Yes	36	125%	Yes [5]	Yes
New Hampshire	Yes	36 [3]	102%	Yes	No
New Jersey	Yes	36 [5]	102%	Yes [6]	Yes
New Mexico	Yes	6 [3, 6]	100%	Yes	No
New York	Yes	36	102%	Yes	No
North Carolina	Yes	18 [4]	102%	Yes	No
North Dakota	Yes	36 [4]	100%	Yes	Yes
Ohio	Yes	6 [4]	100%	Yes	Yes
Oklahoma	Yes	6 [7]	100%	Yes [7]	No
Oregon	Yes	6 [3, 4]	100%	No	na
Pennsylvania	No	na [1]	na	Yes	Yes
Rhode Island	Yes	18	100%	Yes	No
South Carolina	Yes	6	100%	Yes [8]	No
South Dakota	Yes	36 [8]	102%	Yes [9]	No
Tennessee	Yes	15	100%	Yes	No
Texas	Yes	36	102%	No	na
Utah	Yes	6	102%	Yes	Yes
Vermont	Yes	12 [4]	100%	Yes [10]	No
Virginia	No	na [1]	na	No [1]	No
Washington	No	na [1]	na	Yes	No
West Virginia	Yes	18	100%	Yes	No
Wisconsin	Yes	18	100%	Yes	No
Wyoming	Yes	12 [4]	102%	Yes	No

See Sources and Definitions on next page.

Table 2A

This table was created by the authors, based on data from "Expanded COBRA Continuation Coverage for Small Firm Employees, 2007," statehealthfacts.org, The Henry J. Kaiser Family Foundation, 2007. This information was reproduced with permission from the Henry J. Kaiser Family Foundation. The Kaiser Family Foundation is a nonprofit private operating foundation based in Menlo Park, California, dedicated to producing and communicating the best possible information, research, and analysis on health issues.

Data Sources:
Data as of December 2007. Data compiled through review of state laws and regulations and interviews with state health insurance regulatory staff. For more detailed information on consumer protections in any state see Georgetown University's "Consumer Guides For Getting and Keeping Health Insurance," available at http://www.healthinsuranceinfo.net/.

Data collection and analysis by researchers at the Health Policy Institute, Georgetown University.

Notes:
State COBRA expansion programs extend coverage to employees in firms with fewer than 20 workers who are not covered by COBRA, the federal law. Coverage under these state continuation programs may differ in duration, restrictions, and eligibility from the coverage provided to workers under the federal law.

Definitions:
COBRA: Consolidated Omnibus Budget Reconciliation Act of 1985. COBRA amended the Employee Retirement Income Security Act of 1974 to require temporary group continuation health insurance for employees and their dependents. The federal law applies only to employees in firms with 20 or more workers.

Maximum Duration of Continuation Coverage: Actual duration of state continuation coverage may be less depending on the qualifying event.

Rating Restrictions: Percentage of the Group Rate: Under all state continuation coverage laws, the person electing continuation coverage must pay the entire premium (employee and employer) share and, in some states, an administrative fee. The added administrative fee varies from state to state but is typically 2 percent of the total premium. Similar to the federal COBRA provisions, many states permit insurers to charge much higher premiums (typically 150 percent of the group rate) for those electing state continuation coverage because of disability. These states are not reflected on the charts.

Footnotes:
[1] States without Continuation Coverage for Small Firms: Alabama, Alaska, Arizona, Delaware, Idaho, Indiana, Michigan, Montana, Pennsylvania, Virginia, and Washington. In Arizona and Virginia, insurers have the option of offering either continuation or conversion. In Washington, insurers are required to offer employers the option of having a continuation coverage provision, however, continuation coverage is not mandated in group policies.

[2] In Idaho, except extension of benefits up to 12 months for individuals who are pregnant or disabled, generally there is no continuation coverage.

[3] Six states have continuation laws that extend, for certain individuals (generally 55 and older), continuation coverage to the time when the individual is eligible for Medicare. These states include Illinois, Louisiana, Maryland, Missouri, New Hampshire, and Oregon. In addition, in New Mexico, group plans offered through the New Mexico Health Insurance Alliance continue coverage indefinitely. In these states, group carriers have the discretion not to continue coverage for certain coverage benefits such as prescription drug coverage, dental benefits, and vision benefits.

[4] In these states, group carriers have the discretion not to continue coverage for certain coverage benefits such as prescription drug coverage, dental benefits, and vision benefits. In North Dakota, in the case of divorce, insurers are permitted to charge 102 percent of the group rate.

[5] In New Jersey, an individual who is considered disabled, under some circumstances, may continue coverage until he or she is no longer considered disabled.

[6] The New Mexico Health Insurance Alliance permits some individuals to continue to maintain Alliance coverage indefinitely. In order to be eligible an individual must have maintained Alliance group coverage for six months and no longer be eligible for this coverage for almost all reasons (i.e., loss of employment, loss of policy, aging off parents' policy, death, or divorce). Premiums for continuation coverage through the Alliance are about 9 percent higher than typical group premiums.

[7] In Oklahoma, information applies to non-HMO plans. Longer periods of extension (three to six months) exist for those undergoing treatment or pregnancy at termination of coverage. HMOs are required to extend coverage through pregnancy or ongoing inpatient treatment.

[8] In South Dakota, the premium to continue coverage after 18 months increases to 150 percent.

Table 2B

This table was created by the authors, based on data from "Expanded COBRA Continuation Coverage for Small Firm Employees, 2007," statehealthfacts.org, The Henry J. Kaiser Family Foundation, 2007. This information was reproduced with permission from the Henry J. Kaiser Family Foundation. The Kaiser Family Foundation is a nonprofit private operating foundation based in Menlo Park, California, dedicated to producing and communicating the best possible information, research, and analysis on health issues.

Data Sources:
Data as of December 2007. Data compiled through review of state laws and regulations and interviews with state health insurance regulatory staff. For more detailed information on consumer protections in any state see Georgetown University's "Consumer Guides For Getting and Keeping Health Insurance," available at http://www.healthinsuranceinfo.net/.

Definitions:
Sometimes, people leaving a fully insured group health plan sold by an insurance company have conversion privileges. That means when group coverage ends, an individual may have the right to buy a non-group health insurance policy from the former group insurer. This is called conversion coverage or conversion rights. State conversion rules do not apply to self-insured group health plans.

Footnotes:

[1] In Arizona and Virginia, insurers have the option of offering either conversion or state continuation coverage.

[2] Rating limits only apply to conversion polices offered through the Connecticut Health Reinsurance Association CHRA.

[3] In DC, only HMOs are required to offer conversion policies.

[4] In Indiana, only small group insurers are required to offer conversion policies.

[5] In Nevada, only non-HMO insurers are required to offer a conversion policy.

[6] In New Jersey, insurers are required to offer a conversion policy only in cases of divorce.

[7] In Oklahoma, only HMOs are required to offer a conversion policy.

[8] In South Carolina, insurers are required to offer conversion only in cases of divorce and dependents aging off of a plan.

[9] In South Dakota, insurers are required to offer conversion only in the case of divorce.

[10] In Vermont, except in cases of death, the state does not impose any rating restriction on conversion policies. In the case of death, widows and orphans must be offered a conversion policy with premiums no greater than 102 percent of the group plan.

- **HIPAA, states must require at least one insurer to accept HIPAA-eligibles.**

  States should enact laws requiring these insurers to limit premiums for policies serving HIPAA-eligibles to, or close to, standard rates (rates charged to other individuals with average health risks). As shown in Table 3, in all but six states, people who are theoretically protected under HIPAA may be charged premiums that are both much higher than their premiums in job-based plans and higher than average individual market premiums. (Twelve of these states provide some subsidies to low-income HIPAA-eligibles. This is a helpful initiative that other states should consider.) In eight states, there are no limits to how much more HIPAA-eligibles can be charged. Furthermore, in many states, consumers cannot get the benefits they need through HIPAA policies: They face large deductibles before the plans will pay for services, or they face caps on benefits and gaps in coverage for needed services.

How Do States Cover HIPAA-Eligibles?

Generally, states use one of the following options to make coverage available to HIPAA-eligibles:

- **Require that all plans sold in the individual health insurance market be available to everyone**. A handful of states require that all individual plans be available to everyone, which is called guaranteed issue. Moreover, these states do not allow insurers to increase premiums based on health status or a person's history of medical claims.
- **Designate particular standardized policies that all insurers must offer to HIPAA-eligibles**. Some states require all insurers to sell particular policies to HIPAA-eligibles rather than allowing insurers to select the policies they'll offer.
- **Allow insurers to select two policies to offer to HIPAA-eligibles**. A number of states use what the HIPAA law refers to as the federal fallback option. Under this option, states can require insurers to offer their two most popular individual market policies to HIPAA-eligibles, or to offer one low- and one high-coverage policy that are similar to other policies offered in the individual market.
- **Establish high-risk pools**. Many states have established high-risk pools, which are separate health insurance plans that serve high-risk populations and people who are HIPAA-eligible. In 29 states, high-risk pools are the only guaranteed coverage option for HIPAA-eligibles.
- **Allow people to convert their job-based coverage into individual coverage**. Three states (Florida, Georgia, and Ohio) provide HIPAA-eligibles with an option to buy an individual policy from the same insurer that provided job-based coverage to them in the past. This is called conversion. However, benefits in these policies are not always as generous as benefits in the job-based policy.
- **Require Blue Cross to make at least two policies available to HIPAA-eligibles**. Two states (Michigan and Pennsylvania) require Blue Cross insurers to make at least two of their policies available to HIPAA-eligibles.

See Table 3 for which mechanism is used in your state.

Table 3
HIPAA Coverage and Premiums under State Law

State	Which Plans Must Accept HIPPA-Eligibles?	What Is the Limit on Premiums?[1]
Alabama	High-risk pool	2 times standard premium
Alaska	High-risk pool	1.5 times standard premium
Arizona	Federal fallback	Unlimited
Arkansas	High-risk pool	1.5 times standard premium
California	Federal fallback and high-risk pool	1.25 times standard premium[2]
Colorado	High-risk pool	1.5 times standard premium*
Connecticut	High-risk pool	1.5 times standard premium*
Delaware	Federal fallback	Unlimited
District of Columbia	Federal fallback	Unlimited
Florida	Conversion and federal fallback	Unlimited for some plans
Georgia	Conversion	1.5 times standard premium
Hawaii	Federal fallback	Unlimited
Idaho	Guaranteed issue of some plans	1.5 times standard premium
Illinois	High-risk pool	1.5 times standard premium
Indiana	High-risk pool	2 times standard premium*
Iowa	High-risk pool	1.5 times standard premium
Kansas	High-risk pool	1.5 times standard premium
Kentucky	High-risk pool	1.75 times standard premium
Louisiana	High-risk pool	2 times standard premium
Maine	Guaranteed issue	No higher
Maryland	High-risk pool	2 times standard premium*
Massachusetts	Guaranteed issue	No higher
Michigan	2 Blue Cross plans	No higher
Minnesota	High-risk pool	1.25 times standard premium*
Mississippi	High-risk pool	1.75 times standard premium
Missouri	High-risk pool	2 times standard premium*
Montana	High-risk pool	1.5 times standard premium*
Nebraska	High-risk pool	1.35 times standard premium
Nevada	Guaranteed issue of some plans	1.75 times standard premium
New Hampshire	High-risk pool	1.5 times standard premium
New Jersey	Guaranteed issue	No higher
New Mexico	High-risk pool	1.5 times standard premium*
New York	Guaranteed issue	No higher
North Carolina	High-risk pool	2 times standard
North Dakota	High-risk pool	1.35 times standard[2] premium
Ohio	Conversion or basic, standard	2 times standard premium
Oklahoma	High-risk pool	1.5 times standard premium
Oregon	High-risk pool and guaranteed issue of some plans	No higher
Pennsylvania	2 Blue Cross plans	Unlimited
Rhode Island	Federal fallback	Unlimited
South Carolina	High-risk pool	2 times standard premium
South Dakota	High-risk pool	1.5 times standard premium [2]
Tennessee	Federal fallback or high-risk pool	2 times standard premium*
Texas	High-risk pool	2 times standard premium
Utah	High-risk pool	2 times standard premium *
Vermont	Guaranteed issue	No higher
Virginia	Federal fallback	Unlimited
Washington	Guaranteed issue	No higher
West Virginia	High-risk pool or federal fallback	1.5 times standard premium
Wisconsin	High-risk pool	2 times standard premium*
Wyoming	High-risk pool	2 times standard premium*

* Low-income people may pay lower premiums for HIPPA policies in these states.

Table 3 Notes

Note: This table reflects the maximum premiums allowed under state laws. Some high-risk pool boards and plans charge lower premiums, and some state insurance departments may require lower rates through their rate review processes. See "How Do States Cover HIPPA-Eligibles?" on page 10 for a discussion of guaranteed issue, high-risk pools, federal fallback, and conversion.

Definition: "Guaranteed issue of some plans" refers to state-designated plans that insurers are required to offer to HIPPA-eligibles.

Footnotes:

[1] States can set limits on how much plans can charge based on standard premiums. Generally, standard premiums are the rates that insurers charge to individuals who are not applying for HIPAA coverage and who are in average health. States use different methods to calculate standard premiums.

[2] California, North Dakota, and South Dakota high-risk pools use a slightly different method to compute maximum premiums.

Sources: National Association of State Comprehensive Health Insurance Plans, *Comprehensive Health Insurance for High-Risk Individuals: A State by State Analysis, 2008/2009* (Indianapolis: NASCHIP, 2008); Centers for Medicare and Medicaid Services, "State Status Chart as of 12/15/08" (Baltimore: Centers for Medicare and Medicaid Services, 2008), available online at http://www.cms.hhs.gov/HealthInsReformforConsume/Downloads/2008-1215_State_Status_Chart.pdf; "Expanded COBRA Continuation Coverage for Small Firm Employees, 2007," statehealthfacts.org, Kaiser Family Foundation, 2007; "State Conversion Coverage for Small Firm Employees, 2007," statehealthfacts.org, Kaiser Family Foundation, 2007; Personal communications with insurance department officials in Georgia, Michigan, Missouri, Montana, Nevada, Ohio, Oregon, Pennsylvania, and Washington, and review of some state statutes, December 2008 and January 2009.

- **Improve the assistance that is available under the Health Coverage Tax Credit.**

  States can help with outreach, provide "bridge" assistance to help pay insurance premiums while people wait for their first tax credits to be processed, and improve coverage options for people who receive the tax credit.

  - **Expand outreach efforts**: All states should educate the staffs of agencies that come into contact with laid-off workers about the availability of the Trade Adjustment Act Health Coverage Tax Credit and how to help people apply. A few states provide intensive outreach to workers in areas where people are most likely to qualify for trade act assistance.
  - **Provide bridge assistance**: Since people may be unable to pay full premiums during the initial period between when they lose their jobs and when their tax credits are processed, some states have provided assistance for this period, establishing revolving loan funds or grants.
  - **Improve coverage options**: Most states have designated insurers who must accept all people who are eligible for the Health Coverage Tax Credit and who do not have access to COBRA.[6] These state-designated insurers are governed by "guaranteed issue," meaning that they cannot turn away people with the Health Coverage Tax Credit. They also cannot exclude coverage of a person's pre-existing condition if that person had coverage for the past three months. However, in many states, there are real inadequacies in the state-designated plans: Some do not cover important services such as mental health, substance abuse, and maternity care; some states allow insurers to charge more based on health status; and in some states, only very expensive coverage is available. States should review the plans that they designate for the Health Coverage Tax Credit and make improvements in both the coverage and the cost.[7]

- **Provide public coverage to low-income unemployed workers.**

  States vary considerably in their coverage of working-age adults. Some Medicaid programs provide coverage only to parents whose incomes are well below the federal poverty level, while others have established more generous income guidelines that better assist laid-off workers. States are allowed to establish Medicaid income limits for parents at any level. Increasing eligibility levels could help many unemployed workers. Further, some states have received waivers of standard Medicaid rules from the federal government that allow them to provide coverage to low-income adults who do not have dependent children. States use savings from elsewhere in their Medicaid programs to finance this coverage. (Without a waiver, states cannot receive federal matching funds for Medicaid coverage of these adults.) Other states have established programs with their own state and local funds to provide coverage to low-income adults who do not qualify for Medicaid. These are all excellent ways of assisting unemployed workers. However, during a recession when state budgets are extremely tight, states need federal help just to sustain the coverage that they already provide. States need an increase in federal matching funds. They also need the flexibility to cover adults who do not have dependent children through their Medicaid programs without a waiver. Without federal help, it is unlikely that many states will be able to expand public coverage.[8]

- **Establish state programs to subsidize COBRA coverage or premiums for other plans covering unemployed workers, possibly as an add-on to unemployment benefits.**

  Massachusetts established such a program in 1990 that serves as a good model. The program, called Massachusetts's Medical Security Plan, provides medical security for unemployed workers. The plan helps people maintain coverage while they are receiving unemployment insurance benefits, and it is fully financed through very small assessments on employers ($16.80 per employee annually for employers with more than six employees).[9] It is the only program of its kind in the country. For some workers, it assists in paying COBRA premium costs, while for others, Massachusetts directly provides coverage through an arrangement with a Blue Cross plan (See "Massachusetts's Medical Security Plan" on page 14 for details).

Conclusion

States can play an important role in helping people who lose their jobs maintain their health insurance. As regulators, states can guarantee that people will have access to good health insurance policies when they become unemployed—regardless of their health conditions—and states can limit the amount that insurers charge unemployed workers in premiums. States can also help pay for coverage when unemployed workers cannot afford it on their own. However, in this recession, it will be nearly impossible for most states to take on this cost without significant federal help.

Massachusetts's Medical Security Plan

During the first 10 months of 2008, Massachusetts's Medical Security Plan assisted, on average, 10,285 unemployed workers and dependents each month. Unemployed workers are eligible for help paying for health insurance if their gross family income is under 400 percent of poverty ($70,400 for a family of three in 2008) and they are not covered through their spouse's insurance or another public program. Eligibility is calculated based on family incomes during the six months before they applied for assistance and their projected incomes (including income from unemployment compensation) over the next six months. Since all Massachusetts residents receive information about applying for the Medical Security Plan at the same time that they apply for unemployment assistance, administrators believe that there is a good rate of enrollment among those who are eligible. However, advocates point out that even more outreach is needed. Participation in the Medical Security Program is compromised when the unemployment system is under stress due to an enormous increase in claims and underfunding of administrative costs, as is it now. The program assists about 10 percent of unemployment claimants.[10] (Other unemployment claimants are probably not eligible because although they work in Massachusetts, they live elsewhere; they have coverage available through their spouses; or they have incomes that exceed program guidelines.)

The Massachusetts Medical Security Plan has two components: premium assistance and direct coverage. Premium assistance is available to people who continue their coverage through COBRA or through another insurance plan that they purchased before becoming unemployed. Premium assistance reimburses them for 80 percent of their premiums monthly, up to a maximum of $440 per month for an individual plan or $1,080 per month for a family plan.[11] Direct coverage is available to people who cannot participate in COBRA or cannot continue another health insurance plan, and to people who cannot afford to pay anything toward premiums.[12] Under the direct coverage program, the state provides a comprehensive benefit package, administered by Blue Cross, which includes prescription drug coverage, mental health and substance abuse treatment, laboratory tests and x-rays, and doctor and hospital care. Participants pay deductibles and copayments, but no premiums. The cost of direct coverage for participants averaged about $380 per month per enrollee in 2007 (2008 statistics were not available at the time of the release of this issue brief).[13] About two-thirds of Medical Security Plan participants receive direct coverage, and one-third receive premium assistance.

Endnotes

[1] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 1998 to 2008* (Washington: Bureau of Labor Statistics, data extracted on December 17, 2008), available online at http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=latest_numbers&series_id=LNS14000000.

[2] 29 U.S. Code, §§1161 et seq.

[3] 29 U.S. Code §1181 et seq. and 42 U.S. Code §300gg-41 et seq.

[4] Stan Dorn, *Health Coverage Tax Credits: A Small Program Offering Large Policy Lessons* (Washington: Urban Institute, February 2008). To enroll in the Health Coverage Tax Credit program, people must first qualify for Trade Adjustment Assistance through the Trade Adjustment Act by taking the following steps: 1) A union or group of workers petitions the state government and the U.S. Department of Labor to certify that the workers were adversely affected by foreign trade; 2) Individual workers then apply for services at their state "one stop career center" or unemployment office. When the state finds that the workers are eligible for other Trade Adjustment Assistance services (including unemployment income or trade adjustment income supplements), the state notifies the IRS. The IRS mails a registration packet, allowing the person to either request monthly premium assistance or claim the tax credit at the end of the year. For monthly assistance, the person must show that he or she is enrolled in a qualified health plan—such as COBRA or a plan designated by their state for this purpose—and send the IRS a recent health insurance bill and other documents. After the IRS processes the registration, the IRS begins invoicing the individual for his or her 35 percent share of premiums, and the IRS pays the remaining 65 percent directly to the health plan. However, it is typical during this application and registration process for people to pay about three months of premiums in full to keep their health insurance going. Although they may eventually get some money back, people may fall through the cracks during this process. (The law (26 U.S.C. § 4980B(f)(5)(C)) actually allows them a chance to enroll in COBRA once they are certified as eligible for the tax credit, even if 60 days have passed since they lost their job. However, the information they receive from the IRS does not tell them this.)

[5] As noted earlier, some people can receive COBRA for longer periods, for example, family members of a worker who qualifies for Medicare and people found eligible for Social Security Disability benefits.

[6] Internal Revenue Service, *HCTC: List of State Qualified Plans*, available online at http://www.irs.gov/individuals/content/0,,id=187058,00.html, accessed on December 19, 2008. According to the Internal Revenue Service Web site, Delaware, Mississippi, Nevada, New Mexico, South Dakota, and Wyoming have not designated plans that are qualified to accept the Health Coverage Tax Credits.

[7] For more discussion, see Families USA, *The Trade Act Health Insurance Subsidy: An Update from the States* (Washington: Families USA, December 2003), available online at http://www.familiesusa.org/assets/pdfs/TAARA_Implement_Nov_2003.pdf; and Stan Dorn, *Take-Up of Health Coverage Tax Credits: Examples of Success in a Program with Low Enrollment* (Washington: Urban Institute, December 2006).

[8] For state-specific information, see Keavney Klein and Sonya Schwartz, *State Efforts to Cover Low-Income Adults without Children* (Washington: National Academy for State Health Policy, 2008), available online at http://www.nashp.org/Files/shpmonitor_childless_adults.pdf; and Kaiser Family Foundation, statehealthfacts.org, I*ncome Eligibility for Parents Applying for Medicaid by Annual Income as a Percent of Federal Poverty Level (FPL) 2008*, available online at http://www.statehealthfacts.org/comparetable.jsp?ind=205&cat=4.

[9] Employers make contributions to the Medical Security Trust in much the same way that they contribute to unemployment insurance. Since the program's inception, the $16.80 per employee, per year contribution has been enough to fully fund the Medical Security Plan. However, if unemployment continues to rise, the program may need additional revenue. The Medical Security Program is part of Massachusetts's Medicaid waiver, so the state receives some federal financial participation.

[10] U.S. Department of Labor, *State Weekly Claims for Unemployment Data* (Washington: U.S. Department of Labor, 2008), available online at http://workforcesecurity.doleta.gov/unemploy, click on "Weekly Claims." Department of Labor data show that Massachusetts had 8,266 initial and 80,453 continued unemployment claims during the week that ended October 11, 2008. That month, according to data from Wendy Hamlett, Program Director of the Massachusetts Medical Security Plan, the Medical Security Plan provided coverage to a total of 8,759 claimants. A total of 5,217 claimants received direct coverage, and 2,542 received premium assistance. Many claimants received help paying for family coverage, and thus the program provided assistance to a total of 12,261 workers and dependents in October 2008. Phone calls and e-mails exchanged with Wendy Hamlett, Program Director of the Massachusetts Medical Security Plan, January 2, 2009.

[11] Massachusetts revises the maximum premium contribution annually based on the average total premiums (those paid by the individuals and those paid through premium assistance) that are actually charged to unemployed workers.

[12] People are eligible for direct coverage if: 1) Their actual available income is under 200 percent of poverty ($20,800 for an individual in 2008); 2) They would have to use more than 7 percent of their family income for health insurance under the premium assistance program; 3) They missed the federal deadline for electing COBRA coverage; or 4) The Division of Unemployment Assistance determines that the family will be unable to pay for housing, heat, food, or other basic necessities if they pay the premiums.

[13] The state pays claims on a fee-for-service basis, not through a capitated arrangement with a health plan.

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