



**The State of New Hampshire
Insurance Department**

21 South Fruit Street, Suite 14
Concord, NH 03301

**Roger A. Sevigny
Commissioner**

**Alexander K. Feldvebel
Deputy Commissioner**

BULLETIN

Docket Number INS No. 09-017-AB

TO: All New Hampshire Licensed Health Insurance Companies, Health Maintenance Organizations, Fraternal Benefit Societies and Third Party Administrators

FROM: Roger A. Sevigny

A handwritten signature in black ink, appearing to read "RAS", positioned above the "FROM:" line.

DATE: March 11, 2009

RE: Guidance Concerning Effect of the American Recovery and Reinvestment Act of 2009 On State Continuation Coverage

This bulletin is intended to provide guidance concerning the effect of the American Recovery and Reinvestment Act of 2009 (ARRA) on state continuation coverage under RSA 415:18, XVI. State continuation coverage establishes comparable rights for employees who lose coverage in fully insured employer benefit plans as are provided in COBRA to employees receiving health benefits through a self-insured arrangement.

The central question that has been raised concerns whether the extended period for electing COBRA coverage will be applied to state continuation coverage. Under the ARRA, individuals who are eligible for COBRA coverage or state continuation coverage due to an involuntary termination occurring between September 1, 2008 and December 31, 2009 may be eligible to obtain COBRA or state continuation coverage for a subsidized premium payment in the amount of 35% of the total premium due (a 65% subsidy). In recognition that some employees may have declined the right to obtain COBRA or state continuation coverage based on financial considerations, the ARRA extends the election period for those who declined COBRA coverage by creating a

second election period. Under the ARRA, the plan is required to send a notice by April 18, 2009 to all individuals eligible for the subsidized premium that a second election period of 60 days will be available, beginning on the date of notice.

Although the ARRA does not explicitly require that a second election period be provided for individuals eligible for subsidized premiums under state continuation, a second election period is implicitly required. Under New Hampshire law, individuals who receive benefits through a fully insured plan may elect state continuation rather than COBRA. To avoid pre-emption, the state requirements must be at least as stringent as the federal law. Accordingly, the department will require all carriers providing health insurance to employer groups to provide notice of the second election period in accordance with the ARRA.