

Justification for Emergency PRA Clearance of the Application for Expedited Review of Denials of Continuation Coverage Premium Assistance

Issue

CMS is requesting emergency approval of the application for expedited review of denials of continuation coverage premium assistance. We are requesting approval under 5 CFR 1320.13. CMS is mandated by the American Recovery and Reinvestment Act (ARRA) to conduct such reviews.

Background

The American Recovery and Reinvestment Act of 2009 (P.L. 111-5) provides for premium assistance and expanded eligibility for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986 (commonly called COBRA), as well as under continuation coverage for federal employees and under state continuation coverage programs (that is, State “mini-COBRA” plans). This premium assistance is not paid directly to the covered employee or the qualified beneficiary, but instead is paid through a tax credit for the health plan, the employer, or the insurer. An individual must be an "assistance eligible individual" to be eligible for the premium assistance. Eligible individuals pay only 35% of their continuation coverage premiums to the plan or insurer; the remaining 65% is paid through the tax credit. Eligible individuals could start getting the premium assistance as of the first day of coverage beginning on or after February 17, 2009.

An “assistance eligible individual” is a “qualified beneficiary¹” who:

- Is eligible for continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;
- Elects continuation coverage; and
- Has a qualifying event for continuation coverage that is the employee’s involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

ARRA also provides that individuals who request treatment as an assistance eligible individual and are denied such treatment have the right to an expedited review of the determination that they are not eligible for assistance with their continuation coverage. The Secretary of Labor is responsible for review of denials through ERISA plans and the Secretary of HHS is responsible for the review of denials of continuation coverage assistance through all other plans (that is, non-federal governmental plans, FEHBP and the State mini-COBRA programs), upon application to the Secretary in the form and manner the Secretary provides. The statute requires that appeal decisions be issued within 15 business days of receipt of the request for a review. CMS has been delegated by the Secretary to implement this expedited review provision of ARRA.

¹ In general a “qualified beneficiary” is an individual who was covered by a group health plan on the day before a qualifying event occurred that caused him or her to lose coverage. A qualified beneficiary must be a covered employee, the employee’s spouse or former spouse, or the employee’s dependent child.

In consultation with the Department of Labor, CMS has developed a model application for individuals to use in filing their requests for expedited reviews of denials of continuation coverage premium assistance. Such individuals generally must complete all information requested on the application in order to obtain a decision on the request for a review. The information provided on the form will be critical for CMS to be able to meet the mandated 15 business day timeframe to make a determination.

Justification for Emergency Approval

ARRA was enacted on February 17, 2009, and mandates that the COBRA premium assistance provisions in section 3001 take effect immediately. In practice, for most individuals who qualify for the premium assistance at the time of enactment, March 2009 was the first month in which they could receive the assistance. Since the enactment of the ARRA, CMS has taken a series of immediate steps to implement the required expedited review process, including concluding a procurement action to select a contractor to administer the review process. assist in building the process. The contractor was formally selected on April 3, 2009. Since that point in time, staff at CMS has been working with the contractor and staff from the Department of Labor (DOL) to develop the form for requesting expedited reviews (since DOL will also be conducting expedited reviews of denials of COBRA premium assistance, we concluded that it would be advantageous for the CMS and DOL forms to ask for essentially the same information, in a similar format).

Under its contract, the contractor that will conduct the expedited reviews and is required to begin accepting and adjudicating requests for expedited review of the denials for continuation coverage premium assistance by May 4, 2009. Thus, it is critical that the form for requesting such reviews be available for the public as soon as possible.

Any delay in the ability to utilize the form will delay the implementation of the reviews and, therefore, delay individual beneficiaries’ ability to pay and obtain continuation of their health insurance. Such delays would directly conflict with the clear statutory intent of the ARRA to make this premium assistance available to Americans who have lost their jobs as soon as possible, and thus to avoid the serious health risks associated with the loss of health insurance coverage. Accordingly, we are requested emergency approval of the model application for an expedited review of a denial of continuation coverage. Below we have provided a tentative timeline.

Timeline	
Date	Milestone
April 27, 2009	OSORA/PRA submits emergency justification and timeline to OMB

April 28, 2009	OSORA/PRA submits draft emergency package to OMB
April 29, 2009	OMB approves use of emergency process
May 1, 2009	Emergency Federal Register notice on display
May 4, 2009	10-day comment period begins
May 13, 2009	10-day comment period ends
May 15, 2009	OMB approvals package

Please contact Martique Jones at 410-786-4674 or Bonnie Harkless at 410-786-5666 if you have any questions.