How states can build on new federal legislation that subsidizes COBRA coverage for laid-off workers

What does the new legislation do?

The American Recovery and Reinvestment Act of 2009 (ARRA) pays 65 percent of premiums for coverage that employers offer their laid-off workers under the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA). For each subsidy recipient, the federal assistance ends after nine months. To qualify, laid-off workers must meet the following requirements:

- They lost their jobs between September 1, 2008, and December 31, 2009.
- Their only current access to employer-sponsored insurance (ESI) is through their former employer. Accordingly, they do not have an offer of dependent coverage from their spouse's employer, and they have not begun a new job that offers them insurance.
- They are ineligible for Medicare.
- Their income is below $145,000 a year for an individual or $290,000 a year for a couple.

An eligible, laid-off worker pays 35 percent of the premium. After receiving that payment, the health plan collects the 65 percent subsidy by reducing the income and payroll tax withholding it would otherwise owe the federal government for all of its employees.

COBRA governs firms with 20 or more workers. However, ARRA's premium subsidies also pay for coverage offered by smaller employers that are subject to state "mini-COBRA" laws, which 40 states have enacted.[1]

Normally, COBRA enrollment is limited to a 60-day period that begins when a worker is laid off or receives a notice from the employer about the worker's COBRA rights. However, for workers who lost their jobs between September 1, 2008, and the enactment of ARRA, their former employers must send them a new COBRA notice describing the ARRA subsidy. For such workers, these notices trigger a second 60-day opportunity to enroll in COBRA.

What can states do?

States can play a vital role in helping these subsidies achieve their goals by enacting or strengthening mini-COBRA laws. In addition, for workers who lost their jobs between September 1, 2008, and the enactment of ARRA, a state can require its mini-COBRA companies to give their laid-off workers the same new opportunity to enroll in coverage that ARRA requires of employers governed by COBRA.

More boldly, a state could supplement the federal government's 65 percent subsidy, which many observers expect will be too small to make coverage affordable to most unemployed workers and their families. With an existing program that pays 65 percent of premiums for workers who lost their jobs because of international trade, only 12 to 15 percent of eligible households enroll,[2] mainly because most eligible households cannot afford to pay 35 percent of premiums.[3] That percentage of the premium is significantly more than what employed workers pay for coverage, which averages 16 percent of premiums for worker-only insurance and 27 percent for family coverage.[4] It is unrealistic to expect that many workers will increase the amount they pay for health insurance when their income drops because of job loss.

States can "piggy back" on this new federal subsidy by providing extra help to the low-income, laid-off workers who are least likely to obtain coverage based on the federal subsidy alone. For example, suppose a state supplements the 65 percent COBRA subsidy by paying an additional 25 percent of premiums for low-income, laid-off workers. The combined federal-state subsidy would cover 90 percent of the COBRA premium. Theoretically, many low-income, unemployed workers who would have remained uninsured will instead, because of the state's supplemental payment, be able to enroll in coverage, bringing into the state a 65 percent federal subsidy that otherwise would have gone unclaimed. The state's economy would thus receive an additional $2.60 in federal COBRA

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subsidies for each $1 the state contributes. In some ways, this approach would involve the functional equivalent of a 77 percent federal matching rate.

Such state supplementation would accomplish three goals:

- Laid-off workers and their families who would otherwise have been uninsured instead retain their health coverage.
- The economy is strengthened when additional federal COBRA subsidies reach a state because of supplemental premium assistance. Those subsidies pay for health insurance and health care that otherwise would not have been purchased, increasing revenue and employment in the health insurance and health care industries.
- Supplementing the federal COBRA subsidy could lessen the burden that COBRA imposes on employers, many of whom worry that only those laid-off workers who expect to use health care will be willing to pay 35 percent of premiums to enroll in coverage. As a result, such enrollees' COBRA premiums may not cover the cost of their care, imposing financial burdens on the firm and, ultimately, on current employees. If a state supplements the federal subsidy, the cost to the worker of enrolling in COBRA declines, and healthier workers can participate.

To accomplish these goals, states may need to limit assistance to the low-income, unemployed workers who are highly unlikely to retain coverage based on the federal subsidy alone. Lowering the cost to the state in this way would also be important, given many states' budget problems.

For example, a state could limit supplemental premium subsidies to laid-off workers with incomes below a threshold amount, such as 200 percent of the federal poverty level. To simplify the eligibility determination process, a state could automatically find unemployed workers to qualify for subsidies when they fall into either of the following categories:

- The worker or a family member of the worker has recently received need-based benefits and so has already been found to have a low income. Such benefits could include the Earned Income Tax Credit, free or reduced price school lunches, subsidized child care, Food Stamps, subsidized fuel assistance, etc. The federal program offering financial aid and student loans to needy families takes a similar approach, automatically qualifying for assistance during the 2009-2010 school year students whose family members received specified public benefits at any time during 2008.
- The worker affirms, under penalty of perjury, that the family's sole source of income is Unemployment Insurance (UI) payments. UI payment levels vary by state, averaging $306.19 a week in January 2009,[5] or 147 percent of the federal poverty level for an individual living alone.[6]

Of course, a laid-off worker unable to establish automatic eligibility in this way could demonstrate low income using standard application procedures under a state's Medicaid or CHIP program.

To deliver the supplemental subsidy, a state could ask the laid-off worker to prove payment of the 35 percent worker share of premium. After receiving such proof, the state could promptly pay the supplemental subsidy to the worker. Massachusetts takes a similar approach to subsidizing 80 percent of COBRA premiums through its 20-year-old Medical Security Program.

ARRA itself neither provides for nor forbids such state supplementation. No federal approval would be required for a state to take the steps described here.

If you are interested in learning more about these options and consulting with an expert, please email us at sci@academyhealth.org.

Endnotes

1 Kaiser Family Foundation, "Expanded COBRA Continuation Coverage for Small Firm Employees, 2007," *Statehealthfacts.org*.

2 Dorn, S., Health Coverage Tax Credits: *A Small Program Offering Large Policy Lessons*, prepared by the Urban Institute for the Robert Wood Johnson Foundation, Feb. 1, 2008.

3 U.S. Department of Labor (DOL) Office of Inspector General, *Performance Audit of Health Coverage Tax Credit (HCTC) Bridge and Gap Programs*, Report Number: 02-05-204-03-330, September 30, 2005; Government Accountability Office (GAO), *Trade Adjustment Assistance: Most Workers in Five Layoffs Received Services, but Better Outreach Needed on New Benefits*, GAO-06-43, January 2006; GAO, *Health Coverage Tax Credit: Simplified and More Timely Enrollment Process Could Increase Participation*, GAO-04-1029, September 2004.

4 Kaiser Family Foundation and the Health Research and Educational Trust, *2008 Employer Health Benefits Survey*, Sept. 24, 2008.

5 DOL, Employment and Training Administration, S*ummary Data for State Programs, by State, Report Period for 01/2009*, Run Date: Feb 25, 2009.

6 For a couple, that payment would equal 109 percent of FPL in 2009; for a family of three, it would reach 87 percent FPL, etc.