WEST VIRGINIA CODE: §33-16-3u

§33-16-3u. Special enrollment period under the American Recovery and Reinvestment Act of 2009.

(a) The Legislature finds that recent attempts to assist unemployed persons during the economic downturn beginning at the end of 2008 included a federal initiative to provide subsidies to certain persons who have lost their employer-sponsored health insurance coverage. As part of the American Recovery and Reinvestment Act of 2009, certain involuntarily terminated employees and their dependents were given an second opportunity to elect subsidized COBRA coverage. This federal initiative also included relief to certain persons not covered by the federal COBRA laws, but access to such relief was made dependent on the states acting to require that such persons be given notice of their right to elect such coverage. Therefore, the Legislature intends that this section be interpreted in such a manner as to maximize the opportunity of West Virginians to obtain these much needed subsidies.

(b) Definitions. -- As used in this section:

(1) "Assistance eligible individual" means any qualified beneficiary who was eligible for continuation coverage between September 1, 2008, and February 17, 2009, due to a covered employee's termination from employment during this period and who elected such coverage.

(2) "Continuation coverage" means accident and sickness insurance coverage offered to persons pursuant to policy provisions required by subsection (e), section three of this article.

(3) "Covered employee" means a person who was involuntarily terminated by a small employer between September 1, 2008, and February 16, 2009, and at the time of his or her termination either: (i) Was eligible for but did not elect to enroll in continuation coverage; or (ii) enrolled but subsequently discontinued enrollment in continuation coverage.

(4) "Qualified beneficiary" has the same meaning as that term is defined in §607(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1167(3).

(5) "Small employer" means any employer that had fewer than twenty (20) employees during fifty percent (50%) or more of its typical business days in the previous calendar year.

(c) An individual who does not have an election of continuation coverage in effect on February 17, 2009, but who would be an assistance eligible individual if such election were in effect, may elect continuation coverage pursuant to this section. Such election shall be made no later than sixty days after the date the administrator of the group health plan (or other entity involved) provides the notice required by Section 3001(a)(7) of the American Recovery and Reinvestment Act of 2009. The administrator of the group health plan (or other entity involved) shall provide such individuals with additional notice of the right to

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elect coverage pursuant to this subsection prior to April 18, 2009.

(d) Continuation coverage elected pursuant to subsection (c) of this section shall commence with the first period of coverage beginning on or after February 17, 2009: Provided, That continuation coverage elected pursuant to this subsection shall not extend beyond the maximum eighteen-month period provided for by subsection (e), section three of this article.

(e) With respect to an individual who elects continuation coverage pursuant to subsection (b) of this section, the period beginning on the date of the involuntary termination and ending on the date of the first period of coverage on or after February 17, 2009, shall be disregarded for purposes of determining the sixty-three day period referred to in subsection (b), section three-m of this article.

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