



The American Recovery and Reinvestment Act of 2009: COBRA Subsidy

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Agenda

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 - COBRA Subsidy – what is it?
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 - Termination of Subsidy Eligibility
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- Next Steps: Action Items for Health Plan Sponsors



COBRA Overview



COBRA Overview

- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
 - What is it?

COBRA gives employees and their dependents who lose coverage under an employer's group health plan due to termination of employment (voluntary or involuntary), reduction in hours of service or other "qualifying event" the right to continued coverage under the ex-employer's group health plan.



COBRA Overview (cont'd)

- Length of coverage?

COBRA coverage is generally available for 18 months from the date coverage is lost, but may be extended in certain circumstances; and can be terminated for non-payment of premiums.

- Premiums paid?

Prior to the ARRA of 2009, the employer was not required to pay any portion of the COBRA premium, with the ex-employee and his/her dependents generally paying the entire COBRA premium (plus a possible 2% administrative fee).



COBRA Overview (cont'd)

- Applicable to?

COBRA applies to group health plans (health insurance plans, HMO's, self-funded health plans, dental and vision plans, prescription drug plans, health FSA's, HRA's, etc...) of employers with at least 20 employees

- Who is eligible?

Covered employees, their spouses and their dependent children who are covered by the group health plan immediately before a qualifying event occurs. Each eligible individual has an independent election right.



COBRA Provisions in the American Recovery and Reinvestment Act of 2009



COBRA Subsidy – what is it?

- Government-provided subsidy of 65% of the COBRA premium
- Applies for a maximum of nine-months
- Reimbursement is through a payroll tax credit
- COBRA eligibility required to be a result of an employee's *involuntary* termination between September 1, 2008 and December 31, 2009



Effective Date

- COBRA periods beginning on or after February 17, 2009.
- No subsidy is available for periods prior to the effective date.



Eligibility

- Who is eligible for the subsidy?
 - Meets general COBRA eligibility (group health plan participant who loses coverage due to qualifying event)
 - Qualifying event must be involuntary termination of employment



Eligibility (cont'd)

- Eligibility Period = between September 1, 2008 and December 31, 2009
 - involuntary termination must occur during the eligibility period (not before or after).
 - loss of coverage must occur during the eligibility period (not before or after).
 - actual COBRA election can occur after eligibility period.
- Employee is/was eligible to elect COBRA between September 1, 2008 and December 31, 2009
 - Must be covered under the group health plan on the day before the involuntary termination
- Spouse and dependent children also eligible independently



Eligibility (cont'd)

Involuntary Termination

“a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee’s implicit or explicit request, where the employee was willing and able to continue performing services.”

- failure to renew a contract
- termination for good cause due to employer action
- lay-off, furlough, etc... resulting in loss of health coverage
- termination elected by employee in return for severance package if after offer period a certain number of remaining employees in the employee’s group will be terminated

Not: divorce, dependent child ceasing to be a dependent child, death, absence due to illness or disability, termination for gross misconduct, or lockout initiated by employees



Limitations on Eligibility

- Phase out of subsidy for individuals with adjusted gross income of between \$125,000 to \$145,000 (for single filers), and \$250,000 to \$290,000 (for joint filers)
- No subsidy for individuals making over \$145,000 (single filer) or \$290,000 (joint filer)
 - Ineligible individual that receives subsidy must repay through income tax payment
 - High-income employee can make a one-time irrevocable election to waive the subsidy



Limitations on Eligibility (cont'd)

- Employers/insurers can treat all COBRA beneficiaries who have coverage due to involuntary termination during the applicable period as eligible – no need to determine whether an individual's income makes him/her eligible.
 - Any subsidy amount received that an individual is not eligible for will be reported on the individual's annual income tax return, and the amount of tax to be paid will be increased by the amount of the subsidy.



Other Eligibility Rules

- Applies to all plans subject to COBRA except Health FSAs
 - Can be federal COBRA or State mini-COBRA plans
- Cannot receive both COBRA subsidy and health coverage tax credit under the Trade Act of 2002 (similar credit for PBGC pension recipients)
- Expedited Appeal Process for individuals denied assistance – DOL must decide appeal within 15 business days



Special Enrollment Right

- **Eligible:**
 - Individuals who were eligible to elect COBRA between September 1, 2008 and February 16, 2009 due to an involuntary termination
 - Did not elect COBRA or elected and no longer enrolled on February 17, 2009 (for reasons other than other group health coverage)



Special Enrollment Right (cont'd)

- **Election:**
 - Eligible individual must request coverage within 60 days from notice of special enrollment rights
 - Coverage is prospective from February 17, 2009
 - Maximum coverage period still runs from involuntary termination / loss of coverage
 - If special enrollment elected – period without coverage through February 17, 2009 does not count toward 63-day break in coverage for purposes of creditable coverage/preexisting coverage condition rules under HIPAA



Termination of Subsidy Eligibility

- Eligibility for the subsidy will end for months of coverage beginning on or after the **earlier of**:
 - 1) Eligibility for Medicare or another group health plan (other than health FSA, employer on-site medical facility, dental/vision/referral services only)
 - 2) Nine months after the subsidy became available
 - 3) COBRA coverage no longer required (e.g. non-payment of premium)



Termination of Subsidy Eligibility (cont'd)

- Eligible individual must notify the plan in writing if he/she is eligible for other coverage
 - Penalty: 110% of subsidy (unless reasonable cause)



Reimbursement Mechanics

- Collection of 35% of COBRA premiums
 - Plan cannot charge more than 35% of the portion of the qualified beneficiary's COBRA premium.
 - 2% administrative charge is included
 - For example: If the employer, as part of a reduction in force, pays 80% of the COBRA premium and requires the employee to pay only 20% of the premium, it doesn't appear that the employer can recover any portion of the COBRA premium from the federal government.
 - Qualified beneficiary's portion of the premium can be paid by a third party, but not by the entity claiming reimbursement of the subsidy



Reimbursement Mechanics (cont'd)

- Collection of 65% of COBRA premium (the subsidy)
 - The subsidy is 65% of the amount charged to the qualified beneficiary
 - Employer subsidized amounts are NOT included in the government subsidy
 - The subsidy is received via a credit against payroll taxes (on Form 941)
 - Excess of subsidy over payroll tax liability treated as a payroll tax overpayment and refunded
 - Employer can offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.



Reimbursement Mechanics (cont'd)

- The payroll tax credit can NOT be taken before 35% COBRA premium is received from the qualified beneficiary
- Premium subsidy is not considered additional income in determining eligibility for a federal or state public benefit program.



Reimbursement Mechanics (cont'd)

- Which entity claims the payroll tax credit?
 - Single employer plans – the employer
 - NOT the insurance company unless the insured plan is covered by only state mini-COBRA
 - Multiemployer plans – the plan
 - Applies for payroll tax credit even if no employees
- Reporting Requirements
 - Entities required to complete Line 12a (credit amount) and Line 12b (number of individuals receiving subsidy) on Form 941
 - Due date for first-quarter Form 941 is not being extended.



Reimbursement Mechanics (cont'd)

- Entity must retain supporting documentation for credit claimed, including:
 - Information on the receipt of employee 35% share (dates & amounts)
 - Insured plan – copy of invoice/stmt from insurance carrier & proof of timely payment of full premium to insurance carrier
 - Attestation of involuntary termination for each employee – including date of involuntary termination
 - Proof of eligibility and election of COBRA coverage
 - SSNs of employees receiving subsidy, amount of subsidy reimbursed for each qualified beneficiary and whether coverage was employee only, employee + or family



Reimbursement Mechanics (cont'd)

- Excess reimbursement is treated as an underpayment of payroll taxes
 - Interest and penalties may apply
 - Does not apply where individual was not eligible for subsidy because of income limitations



Alternative Coverage Option

- Old rule: qualified beneficiaries have the option to continue the level and type of coverage received as of the qualifying event (although they must generally have the ability to change options during open enrollment)
- New rule: plan **may** permit individuals to change coverage to a lower-cost (or same-cost) option
 - Eligibility for election
 - Election to change coverage must be made within 90 days of notice
 - Premium must be less than or equal to premium for coverage at time of qualifying event
 - Alternative coverage option must be offered to active employees also
 - Alternative coverage cannot be dental, vision or EAP only, health FSA or employer on-site medical facility
 - This new rule extends beyond the subsidy period



Notice Requirements

3 DOL Notice Forms

- General Notice
- Alternative Notice
- Notice in Connection with Extended Election Period

General Notice (both full & abbreviated form)

- Notice of subsidy and enrollment right must be provided to individuals who become (or became) entitled to elect COBRA coverage between September 1, 2008 and December 31, 2009
 - This applies to all qualified beneficiary irrespective of their qualifying event
 - Must provide to those who (1) have not yet been provided an election notice & (2) those who were provided a notice but not with ARRA information



Notice Requirements (cont'd)

Alternative Notice

Form for Insurance issuers; must provide to persons who became eligible for COBRA under State law.

Notice in Connection with Extended Election Period

Must be sent to individuals who are COBRA eligible (qualifying event occurs) between September 1, 2008 and February 16, 2009

- This is not required for plans that are not covered only by state mini-COBRA (and not federal COBRA) unless the state decides otherwise.



Notice Requirements (cont'd)

- Timing
 - COBRA eligible (qualifying event occurs) between September 1, 2008 and February 16, 2009 ----must provide notice within 60 days of February 17, 2009 (April 18th)
 - This is not required for plans that are not covered only by state mini-COBRA (and not federal COBRA) unless the state decides otherwise.
 - COBRA eligible (qualifying event occurs) between February 17, 2009 and December 31, 2009 ---- must provide notice pursuant to normal COBRA rules
 - Can include notice as part of existing COBRA election forms or in a separate *accompanying* document



Notice Requirements (cont'd)

- Content of Notice
 - Forms to establish eligibility for the subsidy
 - Contact information for the plan administrator
 - Description of the special COBRA enrollment election period for eligible individuals not on COBRA on February 17, 2009
 - Description of obligation to notify the plan of eligibility of other coverage and penalty for failing to do so
 - Description, displayed prominently, of the right to a subsidy and any conditions
 - Description of the option to enroll in alternative coverage – if any available



Notice Requirements (cont'd)

- Penalties
 - Normal COBRA notice penalties apply (up to \$110 per day)
- Model Notices issued by DOL March 20th – located at:
<http://www.dol.gov/ebsa/COBRAmodeInotice.html>



Transition Rule

- Full COBRA premium may be charged for up to 2 billing periods to which the subsidy applies
 - If use this, must:
 - provide reimbursement of overcharge or
 - must be made within 60 days of full payment
 - give a credit for subsequent billing periods
 - can only use credits if reasonable to believe that it will be used within 180 days from the date the full premium was received



Next Steps: Action Items for Health Plan Sponsors



Next Steps: Action Items for Health Plan Sponsors

- 1) Identify eligible employees
- 2) Calculate and report the subsidy to employees and government
- 3) Revise COBRA qualifying event notice (or prepare supplement)



Next Steps: Action Items for Health Plan Sponsors (cont'd)

- 4) Provide notices by April 18th to eligible employees identified terminating between September 1, 2008 and February 16, 2009
- 5) Determine whether to (a) reduce COBRA premium as required or (b) apply transition rule for two billing periods
- 6) Determine whether you will allow qualified beneficiaries to elect an alternative same/lower-cost option
- 7) Consider eliminating employer subsidies for COBRA for involuntarily terminated employees to take advantage of full government subsidy
 - Make former employees whole through taxable severance payment?



Additional Resources

- **Department of Labor website:**

<http://www.dol.gov/ebsa/COBRA.html>

- **Internal Revenue Service website:**

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>



Questions?

PowerPoint at Primerus Labor & Employment Group :

http://www.primerus.com/labor_employment.htm

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