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NEW LAWS AFFECT GROUP HEALTH PLANS

EMPLOYER-SUBSIDIZED COBRA PREMIUMS

The American Recovery and Reinvestment Act of 2009 (ARRA), signed into law on February 17, 2009, included new requirements for employers who provide COBRA group health insurance coverage.

Executive summary	*For a period of up to nine months, employers must subsidize 65% of COBRA premium payments for certain qualified beneficiaries who pay the remaining 35% of the premium. In return, employers may recover the subsidy as a credit on their quarterly employment tax returns.*

COBRA background

In general, COBRA applies to employers who have 20 or more employees on a normal basis. COBRA allows persons who lose group health insurance for a variety of reasons to extend their coverage for a specified number of months following a "qualifying event."

One of these qualifying events is loss of coverage due to the termination (other than because of gross misconduct), or reduction of hours, of a covered employee's employment. The employer must offer such persons COBRA coverage for at least 18 months. Under prior law, the employee was responsible for payment for such insurance up to 102% of the premium.

ARRA CHANGES: Subsidized premiums

Under ARRA, if an employee or dependent is entitled to COBRA coverage due to the employee's *involuntary* termination of employment or reduction of hours during the period from September 1, 2008 through December 31, 2009, the employer must pay a COBRA subsidy of 65% of the employee-required COBRA premium cost for up to nine months if the qualified beneficiary pays 35% of the employee-required COBRA premium for this period.

Offset credit on payroll taxes

An employer is entitled to reimbursement of the subsidy by claiming it as a credit against federal payroll taxes or it can offset quarterly payroll tax deposits. IRS Form 941 has been revised to reflect this reimbursement.

Persons eligible for subsidy

The subsidy is available only to an individual who is entitled to COBRA coverage due to the employee's *involuntary* termination of employment or reduction of hours during the period from September 1, 2008 through December 31, 2009, even if that person did not elect coverage at the time of the qualifying event or if the person had elected coverage and then terminated it. The election period begins on the date of law enactment (February 17, 2009) and ends 60 days after the plan administrator provides a required notice regarding such coverage.

Coverage period effective	Subsidized coverage begins on or after ARRA's enactment. For premiums paid on a monthly basis, it would be effective March 1, 2009. If a COBRA-covered individual pays for more than 35% of coverage during the first two coverage periods following enactment of ARRA, the employer may either reimburse the individual for the overpayment or credit the overpayment toward future premiums.
Duration of subsidy	Subsidized coverage starts with the first coverage period after election of coverage and ends at the earlier of: (a) the time that the maximum COBRA coverage would otherwise have ended if the individual had originally elected coverage at the time of the qualifying event, (b) the individual becomes eligible for group health insurance under another plan or under Medicare, or (c) nine months after subsidized coverage began.
Example	Jean involuntarily terminated employment (was laid off) from Big Company on September 1, 2008. She did not elect COBRA coverage of $500 a month at that time because she could not afford it. Under the new law, Big Company must offer her the opportunity to elect COBRA coverage as of March 1, 2009. If she so elects, Big Company would have to pay 65% of the premium for the next nine months (i.e., $325 per month) and Jean would have to pay the remaining 35% ($175 per month). This subsidized coverage would continue through November 30, 2009 (provided she is not eligible for a new employer's group health plan). At that time, Jean could continue coverage until her normal COBRA period ran out (18 months from September 1, 2008, or through February 28, 2010) at the usual rate of $500 per month.
Income limit	Individuals whose federal modified adjusted gross income is more than $145,000 or, if filing a joint return, $290,000 are not eligible for the COBRA subsidy. The subsidy is reduced for periods in which gross income exceeds $125,000 (or $250,000 for joint returns). The employer is not responsible for checking whether the insured is subject to this income limitation. If the insured does not elect to waive the subsidy payments, then his or her federal income tax will be increased by the amount of the subsidy overpayments made on his or her behalf.
FSA Exception	Flexible spending accounts for health care are not subject to the COBRA subsidy requirement.
Notices	Plan administrators must provide notices to eligible persons of the availability of these subsidized payments. ARRA allows 60 days to give such notices. It also directs the appropriate government agencies to provide a model notice within 30 days of the law's enactment (by March 17, 2009). Please do not hesitate to contact us if you would like a copy of such notice when it is issued.

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SPECIAL ENROLLMENT PERIODS UPON LOSS OF STATE-SPONSORED MEDICAL COVERAGE

CHIPRA

In addition to the new COBRA requirements, another new law known as the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requiring group health plans to offer special enrollment periods and to provide notices to certain qualifying employees was signed into law on February 4, 2009.

Executive summary	*As of April 1, 2009, health plans must be amended to allow certain employees and dependents to enroll in an employer's group health plan if they otherwise lose coverage under the state Children's Health Insurance Program ("CHIP") or Medicaid, or if they become eligible for premium assistance through a state program. The special enrollment period is at least 60 days. Appropriate notices are also required.*

Background	Under HIPAA, if an employee gains a dependent through birth, marriage or adoption, or loses coverage from another employer, then that employee has special enrollment privileges for group health plans.
Special enrollment rights	CHIPRA expands this group of employees to include those employees and their dependents (if otherwise eligible for the plan) who lose coverage under the state Children's Health Insurance Program or Medicaid. The new special enrollment period is at least 60 days.
Amendment deadline and communications	Health and cafeteria plans must be amended by April 1, 2009 to revise these new special enrollment rights, and communications should also be updated to reflect these rights.
Michigan CHIP programs	In Michigan, the state Children's Health Insurance Program is administered through the stand-alone "MIChild" program. Additional CHIP funds support certain children covered by the "Healthy Kids" program. The Maternity Outpatient Medical Services (MOMS) program is also funded through CHIP, as well as the Adult Medical Program also called the Adult Benefits Waiver. These programs are administered through the Michigan Department of Community Health.
Premium assistance	CHIPRA also allows states to offer a premium assistance subsidy whereby the state may choose to pay a subsidy directly to an employer if the employer will accept the subsidy. If not, the state would pay the employee as a reimbursement. Special enrollment rights are given to those who are eligible for premium assistance.
Premium assistance notices	CHIPRA requires the federal Department of Health and Human Services to provide state-specific model notices by November 4, 2010 if a state elects to provide premium assistance.

If you would like our assistance in these matters, please do not hesitate to contact us.

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