

The New Stimulus Package Creates Premium Subsidy for COBRA Continuation Coverage

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On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Act"). Among other changes, the Act helps individuals who are out of work to pay for health care continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Below is a summary of the major changes to COBRA. We expect the federal government to soon issue further guidance regarding the implementation of certain aspects of the law, and we will inform you of these developments.

Premium Assistance for COBRA Continuation Coverage

For a period of up to 9 months, an eligible individual who elects health care continuation under COBRA is required to pay only 35% of the monthly premium cost and is entitled to a subsidy for the remaining 65% of the premium. The Act requires employers to pay the 65% subsidy amount on a monthly basis to the insurance carrier, but they are entitled to reimbursement of this amount from the federal government in the form of a credit against their quarterly payroll taxes.

To qualify for the subsidy, an individual must be involuntarily terminated between September 1, 2008 and December 31, 2009. Individuals terminated for gross misconduct are not eligible for the subsidy.

If an eligible individual pays the full premium amount, rather than the reduced 35% amount, the employer is required to reimburse the individual for the excess amount paid or provide the individual with a credit towards a subsequent premium payment.

Income Limitations

The full subsidy is available to individuals with a modified adjusted gross income of up to \$125,000 (or \$250,000 for joint filers) in the taxable year in which the subsidy is received. Taxpayers with adjusted gross income between \$125,000 and \$145,000 (or between \$250,000 and \$290,000 for joint filers) are eligible for a reduced subsidy. The individual is responsible for assessing whether he or she is eligible for the subsidy, and if a subsidy is provided to an individual whose income exceeds the threshold, the individual must repay the amount of the subsidy through an increase in the taxpayer's income tax liability.

Special Election Period

Employers must provide a special COBRA notice to individuals who were involuntarily terminated between September 1, 2008 and the date of enactment, but who did not elect COBRA coverage. This notice must be given within 60 days. The individuals must be given a new 60-day period in which to elect coverage. The election period begins at enactment, and it ends 60 days after notice is provided to the individual. The Act directs the Department of Labor to issue a model notice within 30 days. For individuals who elect COBRA during this special election period, coverage begins with the first period of coverage after election.

Time Limitations

Although the subsidy is available for up to 9 months, it does not extend the maximum period of COBRA coverage. Eligibility for the subsidy terminates on the earlier of:

- 9 months after the first day of the first month for which the subsidy applies;

- the end of the maximum required period of continuation coverage; or
- the date the individual becomes eligible for Medicare benefits or health insurance under another group health plan.

However, eligibility for coverage under another group health plan does not terminate eligibility for the subsidy if the other group health plan provides only dental, vision, counseling, or referral services; is a health flexible spending account or health reimbursement arrangement, or is coverage for treatment at an on-site medical facility maintained by the employer.

An individual who does not inform the health plan of eligibility under another group health plan or Medicare will be required to pay a penalty up to 110% of the subsidy provided after termination of eligibility. The Secretary of Labor will issue guidance regarding how and when an individual is required to provide notice of eligibility under another plan.

Lower-Cost Health Coverage

Individuals who are eligible for the subsidy may choose a lower-cost health plan offered under the employer's group health plan, provided that the lower-cost plan is not only dental, vision, counseling or referral services, a flexible spending arrangement, or services provided by an employer's on-site medical facility.

General Notice Requirement

In addition to the notice of the Special Election Period, employers must modify their existing COBRA notices to include information regarding the availability of the subsidy, the terms of the subsidy, the option to enroll in different coverage if the employer provides this option, and a description of the obligation to notify the group health plan of eligibility under another plan. Individuals who became eligible to elect COBRA continuation before February 17, 2009 are entitled to receive, within 60 days, a supplemental COBRA notice containing this information.

Additional Provisions

Employers who are not subject to COBRA may still be subject to these new rules. The Act applies to state mini-COBRA laws which require health care continuation.

A person other than the eligible employee may pay the 35% portion of the premium. However, the individual is not eligible for the subsidy if the employer pays this amount. Employers who have had a practice of paying a portion of the COBRA premium as part of a severance arrangement should consider whether this makes financial sense in light of the subsidy.

We expect the government to issue further guidance regarding the implementation of these changes to COBRA, including issuing model notices, and we will keep you informed of those developments.

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