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STIMULUS BILL MAKES CHANGES TO COBRA

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Stimulus Bill Signed Into Law

- On February 17, President Obama signed into law The American Recovery and Reinvestment Act of 2009.
- The Act contains many provisions aimed at stimulating the economy, but also makes important changes to COBRA and HIPAA.
- This presentation will focus on the new COBRA subsidy and related notice requirements.

Background

- What we now refer to as COBRA was originally signed into law on April 7, 1986, as part of the Consolidated Omnibus Budget Reconciliation Act of 1985.
- The Act required group health plans to allow “qualified beneficiaries who would lose coverage as a result of a qualifying event” to elect continuation of group health plan coverage under certain circumstances for up to 36 months.
- COBRA has since been amended many times and the Internal Revenue Service and the Department of Labor have issued regulations, guidance, and model notices.

Background: Qualifying Events

- COBRA as formerly constituted provided the opportunity to elect COBRA coverage if a qualifying event occurred:
 - Death of a covered employee
 - Termination other than by reason of gross misconduct
 - Reduction of hours
 - Divorce or legal separation of the covered employee
 - Medicare eligibility
 - A dependent child ceasing to be a dependent child
 - Employer bankruptcy (retirees only)

Background: Scope and Period of Coverage

- The scope of continuation coverage was required to be identical to that provided to similarly situated beneficiaries under the plan.
- Continuation coverage commenced on the date of the qualifying event.
- The period of coverage continued for 18 months in the event of termination or reduction in hours.
- Other qualifying events triggered 36 months of continuation coverage.
- An 18 month continuation period could be extended to 29 or 36 months under certain circumstances.

Background: Period of Coverage, Continued

- Two other ways to lose COBRA coverage before the expiration of the maximum continuation coverage:
 - Employer ceases to provide any group health plan to any employee.
 - A Qualified Beneficiary's failure to make timely contributions.

Background: Election of Coverage and Premium Requirements

- Qualified beneficiaries had to elect continued coverage within the election period.
- The election period had to be at least 60 days.
- Each qualified beneficiary was entitled to a separate election.
- The plan could require payment of a premium for any period of continuation of coverage except that it could not exceed 102% of the “applicable premium” for such period.

Background: Grace Periods and Conversion Option

- The act provided for a grace period of at least 30 days, longer in some cases. The plan was also required to permit payment for coverage during the period preceding the election to be made retroactively within 45 days of the date of the election.
- If a qualified beneficiary continued coverage for the maximum period, the plan had to provide the same option to convert otherwise normally available under the plan.

The Stimulus Bill Provides a Subsidy

- Prior to the stimulus package, eligible employees electing COBRA paid up to 102% of the premium or cost of coverage. The Employer had no responsibility for paying any part of the premium unless it voluntarily agreed to do so.
- Effective as of the date it was signed (Feb. 17, 2009), the Act provides a subsidy of 65% of the COBRA premium for certain eligible employees for up to nine months.

“COBRA” Gets a New Meaning

- The subsidy applies to “COBRA continuation coverage” which is now defined to include not only “old” COBRA coverage, but any group health plan coverage (other than health FSA coverage) subject to continuation coverage under federal or comparable state law.
- Federal law includes ERISA, the IRC, and the Public Health Service Act which applies to governmental employers.
- Comparable state law is one that allows a covered person to continue similar coverage at specified percentage of plan cost (generally small employers only).

Who is Eligible for the Subsidy?

In order to be eligible for the subsidy, the individual must:

- Be entitled to “COBRA” continuation coverage
- Because of involuntary termination of employment other than by reason of gross misconduct
- Between 9/1/08 and 12/31/09 (and the qualifying event occurs between those dates)
- And did elect or will elect COBRA.

What Does Involuntarily Terminated Mean?

- Remember under the old rules, it did not matter whether the employee voluntarily terminated or was discharged.
- The new rule restricts the subsidy to those involuntarily terminated other than for gross misconduct, for example,
 - performance-based discharges
 - termination for any misconduct that does not rise to the level of “gross misconduct”
 - reductions in force/layoffs/plant shutdowns

How Does The Subsidy Work?

- The employee pays 35% of premium owed by the employee after the employer subsidy, if any (instead of 102%)
- The Employer pays 65% of the unsubsidized premium
- The Employer is entitled to receive a dollar for dollar tax credit for its premium cost, accomplished by an offset on form 941 (income and FICA quarterly payments).
 - The subsidy reimbursement is not available until after the qualified beneficiary's 35% payment is received.

Seeking Reimbursement For The Subsidy

- Employers seeking reimbursement must maintain on file the following:
 - Information on the receipt, including dates and amounts, of the assistance eligible individual's 35% share of the premium.
 - In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
 - In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.

Seeking Reimbursement For The Subsidy (cont.)

- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from Sept. 1, 2008, to Dec. 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from Sept. 1, 2008, to Dec. 31, 2009, and election of COBRA coverage.

Seeking Reimbursement For The Subsidy (cont.)

- A record of the SSN's of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals.
- While the employer must report its subsidy payments on the quarterly Form 941, it may make more frequent payroll deposits that are reduced by the amount of subsidy paid out. This will allow the employer to offset subsidy payments more frequently than once per quarter.

Duration of Subsidy

- The federal subsidy is available for up to 9 months after the later of:
 - the first day of the first coverage period following Feb. 17, 2009, or
 - the date the qualified beneficiary becomes eligible for COBRA coverage (so long as that date is prior to Dec. 31, 2009).
- This 9 months runs concurrently with COBRA coverage and does not serve to extend the COBRA continuation period.
- If the second qualifying event occurs within the 9 month period, the other qualified beneficiaries are eligible for the subsidy through the end of the 9 month period.

Tax Penalties/Paybacks

- A qualified beneficiary's failure to notify the plan of eligibility for other coverage results in a 110% excise tax penalty.
- Certain high-income individuals must repay the subsidy through the tax system when filing their returns. They may waive the subsidy if they choose.

New Notice Requirements

- The Act provides for two new notices to be sent to certain employees.
 - An enhanced election notice
 - An extended election period notice
- The Department of Labor (www.dol.gov/cobra) issued model notices on March 19, 2009, including:
 - a full and an abbreviated version and an alternative version to the enhanced election notice and
 - a model extended election period notice.

New Notice Requirements

- The enhanced election notice or “general notice” must be provided for all qualified beneficiaries
 - who become entitled to elect COBRA between 9/1/08 and 12/31/09, regardless of the qualifying event, and
 - who have yet to receive an election notice or received an election notice that did not include information about the subsidy.

Three versions of this model notice are available.

New Notice Requirements

- The notice must tell eligible employees/qualified beneficiaries of their right to enroll and their right to receive premium assistance if they are assistance eligible individuals.

New Notice Requirements

- The second new notice is the extended election period notice.
- This notice is to be sent to any assistance eligible individual who
 - experienced a qualifying event between September 1, 2008 and February 16, 2009, and
 - either did not elect COBRA continuation coverage or elected COBRA continuation coverage but later let it lapse.

New Notice Requirements

- The extended election notice provides information about the subsidy and about a special COBRA election period for these individuals.
- The extended election notice must be provided within 60 days of February 17, 2009 (April 18, 2009). Assistance eligible individuals will then have 60 days to decide whether to elect coverage.
- Coverage would be retroactive to the plan's first coverage period following February 17, 2009.

New Notice Requirements

- The notices must include the following:
 - The forms necessary for establishing eligibility for the premium reduction;
 - Contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction;
 - A description of the second election period (if applicable to the individual);

New Notice Requirements

- A description of the requirement that the assistance eligible individual notify the plan when he/she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so;
- A description of the right to receive the premium reduction and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

New Notice Requirements: Model General Notice

- DOL has issued three versions of the enhanced election notice or general notice.
- They are the Model General Notice (Full Version), Model General Notice (Abbreviated Version) and the Model Alternative Notice.
- These three versions are intended for different categories of individuals.

New Notice Requirements: Model General Notice

- The Model General Notice (Full Version) includes:
 - A notice letter
 - A COBRA election form
 - A form for switching COBRA continuation coverage benefit options (if allowed by the employer)

New Notice Requirements: Model General Notice

- An FAQ for individuals about their COBRA rights, including possible right to premium reduction
- A summary of COBRA premium reduction provisions under ARRA
- A form to request treatment as an assistance eligible individual to be filled out by the individual.

New Notice Requirements: Model General Notice

- Employers will make the determination of who is an assistance eligible individual based on:
 - Whether the termination was voluntary
 - Whether the involuntary termination occurred between September 1, 2008 and December 31, 2009
 - Whether the individual elected COBRA coverage or not
 - Other reasons (This is not defined, but other reasons for denial are very limited. An example could be that the employer has knowledge that the individual is eligible for other coverage or for Medicare.)

New Notice Requirements: Model General Notice

- The Model General Notice (Full Version) is intended to be sent to:
 - Individuals who have experienced a qualifying event between September 1, 2008 and December 31, 2009; and
 - Who have yet to receive a COBRA election notice or received a COBRA election notice since February 17, 2009 that did not include the information about the premium reduction opportunity.

New Notice Requirements: Model General Notice

- The Model General Notice (Abbreviated Version) includes:
 - A notice letter
 - A shortened FAQ for individuals about their COBRA rights, with information about premium reduction
 - A form for switching COBRA coverage benefit options (if allowed by the employer)

New Notice Requirements: Model General Notice

- A summary of COBRA premium reduction provisions under ARRA
- A form to request to be treated as an assistance eligible individual to be filled out by the individual.

New Notice Requirements: Model General Notice

- This notice is intended for:
 - Individuals who are currently enrolled in COBRA; and
 - Who experienced a qualifying event on or after September 1, 2008.

New Notice Requirements: Model General Notice

- The abbreviated general notice letter does not include a statement about how much the premium payments will cost. This should be added before being sent out.
- Because it goes to individuals already enrolled in COBRA, it does not contain all of the information about COBRA that the individual would have already received in his or her original COBRA notice.

New Notice Requirements: Model General Notice

- The Model Alternative Notice includes:
 - A notice letter
 - A continuation coverage election form
 - A form for switching continuation coverage benefits (if allowed by the employer)

New Notice Requirements: Model General Notice

- An FAQ for individuals about their continuation coverage rights, including possible premium reduction
- A summary of continuation coverage reduction provisions under ARRA
- A form to request to be treated as an assistance eligible individual to be filled out by the individual

New Notice Requirements: Model General Notice

- The Model Alternative Notice is intended for:
 - Individuals who are eligible for state continuation coverage; and
 - Who experienced a qualifying event between September 1, 2008 and December 31, 2009.

New Notice Requirements: Model General Notice

- The ARRA provides for premium reduction for COBRA continuation coverage and state continuation coverage
- COBRA covers employers with 20 or more employees
- Massachusetts continuation coverage law covers employers with between 2 and 19 employees

New Notice Requirements: Model General Notice

- The Massachusetts law includes the same requirements as COBRA.
- The FAQ section of the Model Alternative Notice will have to be adjusted to include the state law requirements, as different states have different requirements .

New Notice Requirements: Model Extended Election Notice

- The Model Extended Election Notice includes:
 - A notice letter
 - A COBRA election form
 - A form for switching COBRA coverage benefits (if allowed by the employer)

New Notice Requirements: Model Extended Election Notice

- An FAQ for individuals about their COBRA rights, including possible premium reduction
- A summary of COBRA premium reduction provisions under ARRA
- A form to request to be treated as an assistance eligible individual to be filled out by the individual

New Notice Requirements: Model Extended Election Notice

- The Model Extended Election Notice is intended for:
 - Individuals who qualify as assistance eligible individuals;
 - Who experienced a qualifying event (involuntary termination) between September 1, 2008 and February 16, 2009; and
 - Who either never elected COBRA or who elected COBRA and later discontinued coverage.

New Notice Requirements: Model Extended Election Notice

- The Model Extended Election Notice gives assistance eligible individuals who either declined coverage originally or elected coverage and let it lapse or discontinued coverage another bite at the apple with the added incentive of premium reduction.
- The model notice is intended for employers who fall under COBRA and would have to be adjusted for smaller employers subject to state continuation coverage laws.

New Notice Requirements: Model Extended Election Notice

- The Extended Election Notice must be provided within 60 days of February 17, 2009. Therefore, they must be provided by April 18, 2009.
- Individuals wishing to take advantage of the extended election period will have 60 days from the date of receipt of this notice to make the election.
- The general election notices are to be provided within the same time period as was required prior to passage of ARRA (14 days or 44 days if the employer self-administers the plan).

Action Items

- Compile a list of any individuals that experienced a qualifying event between September 1, 2008 and the present.
- If a person on the list is currently enrolled in COBRA coverage, send them the Abbreviated General Election Notice. No timetable has been stated for when these must go out, but using the April 18, 2009 deadline for the Extended Election Notice would be reasonable.

Action Items

- If the person on your list has yet to be sent a COBRA notice, send them the full version of the General Election Notice within the normal time period for providing a COBRA notice. Also, provide this notice in a timely manner for everyone who becomes COBRA eligible between now and December 31, 2009.
- By April 18, 2009, provide Extended Election Notices to those on the list who were involuntarily terminated on or before February 16, 2009 and who either declined coverage or enrolled and subsequently discontinued coverage.

Action Items

- Remember that some involuntarily terminated employees may have had family coverage while employed but only elected to continue with an individual plan under COBRA.
- The spouse and dependents of those employees should be sent the Extended Election Notice, as they can now choose to elect coverage.
- The employee should receive the Abbreviated General Election Notice.

Questions?





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