



Compliance Alert

December 23, 2009

COBRA Subsidy Extension

On Saturday, December 19, 2009, the U.S. Senate passed the Fiscal year 2010 Department of Defense (DOD) Appropriations Act by a vote of 88-10. This federal bill included important provisions to the following:

1. Extend and expand the COBRA subsidy program that was enacted in February this year under the American Recovery and Reinvestment Act (ARRA)
2. Extend expanded unemployment benefits through February 28, 2010

COBRA Subsidy Extension:

Four critical components in the extended and expanded legislation:

1. The date an AEI (assistance-eligible individual) must become eligible for COBRA as a result of an involuntary termination is extended from December 31, 2009 to February 28, 2010. Therefore if an AEI experiences a qualifying event in January or February 2010 they are eligible for 15 months of COBRA subsidy.
2. The Subsidy Period has been extended. The length of the subsidy period is extended from 9 months to 15 months. AEIs that have already received 9 months of subsidy are now entitled to an additional 6 months of subsidy. *The extension does not mean the AEI is entitled to an additional 15 months.*
3. Sponsor Notice Requirements – No later than 60 days from the date legislation (February 19, 2010), the plan sponsor must notify any individual who was an AEI on or after October 31, 2009 regarding the extension. The plan sponsor must provide the revised subsidy information within the statutory time period going forward.
4. Retroactive Election by a Participant – An AEI who terminated the COBRA coverage upon the expiration of the subsidy earlier this year may elect to pay premiums retroactively to maintain COBRA coverage and not have a “gap” in coverage. As part of the “transition period” AEIs have until the later of February 19, 2010 or 30 days from the date of the required sponsor notice, whichever is later, to “re-elect” COBRA coverage and pay the subsidized premium to the employer. If COBRA premium has been paid in full, the excess can be credited against additional months of coverage or can be refunded.

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New Notice Requirements

The Defense Act imposes new notice requirements on group health plans to alert individuals to the availability of the COBRA subsidy extension. There are various categories of individuals who must receive notice with varying notice deadlines.

To date, model notices are not yet available. As soon as they become available GBS will implement the required notification process if we are currently administering the client's COBRA benefits. GBS will also provide sample notices to our clients for use if we are not administering their COBRA benefits.

Those individuals who must receive the notice include:

1. AEIs whose COBRA subsidy expired, continued to pay the full COBRA premium for December and are now entitled to an extension.
2. AEIs whose COBRA subsidy expired, did not pay the full COBRA premium for December and are now entitled to an extension.
3. AEIs who are currently receiving a 9-month subsidy and are now entitled to an extension.
4. AEIs having a qualifying event on or after October 31, 2009 and are still within their election period.
5. AEIs terminating after the law's enactment date (December 19, 2009).

Notice Deadlines

There are three different notice deadline dates for the COBRA subsidy extension.

1. For AEIs who did not timely pay the December premium or paid the full premium, the regulation requires the group health plan to provide notice of the COBRA subsidy extension within 60 days starting with December 1. The notice must include information on the ability to make retroactive premium payments.
2. For AEIs who are currently receiving the 9-month subsidy as well as those within an election period, the notice of the COBRA subsidy must be provided within 60 days after the date of the law's enactment (December 19, 2009).
3. For AEIs having a qualifying event occurring after the law's enactment (December 19, 2009), the notice of the COBRA subsidy extension should meet the usual COBRA notice deadlines.

For individuals who failed to pay their COBRA premium because they were unable to pay the full COBRA premium after their subsidy expired, the Defense Act provides an opportunity for these individuals to retain their COBRA coverage at the reduced subsidy rate. Since the group health plan has up to 60 days to notify these individuals of the new option, their COBRA coverage may lapse, but they would be entitled to a reinstatement. AEIs who failed to pay their December premium on

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time have 60 days after the date of enactment (December 19, 2009) or if later, 30 days after the group health plan provides notice.

The Defense Act is resolving an issue that existed with the original ARRA law that prevented an individual from becoming eligible for the subsidy if their termination of employment occurred in December, but their COBRA did not start until January 1. The Defense Act amends the ARRA to base the COBRA subsidy on when the qualifying event occurs and not when COBRA begins. For involuntary terminations of employment occurring February 28, 2010, the COBRA subsidy will be available even though the COBRA period will not begin until March 1.

As more information and the notices become available we will provide you with everything needed in order to be in compliance with this change.

If you have any questions regarding this information, please contact your Group Benefit Services Account Manager at 1.800.638.6085.

This communication is not intended to be legal advice and should not be construed as legal advice. If you have any legal questions or concerns about your plan, GBS recommends seeking counsel from an ERISA attorney.

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