



The American Recovery and Reinvestment Act of 2009 (the "Act") Enactment Date: February 17, 2009

Summary of COBRA Premium Subsidy

How Does the Act Affect COBRA?

Generally, the Act approved by Congress and signed into law by the President on February 17, 2009 is an economic stimulus package that includes an expansion of COBRA by providing COBRA assistance for certain unemployed individuals and their families with adjusted gross income below a maximum threshold. The Act imposes a number of requirements on employers, plan administrators, and insurers and also applies to any state-mandated continuation coverage. Briefly, it requires employers (or plan sponsors or insurers of certain insured plans) to provide a COBRA subsidy to an assistance-eligible individual. The subsidy is offset by a tax credit against the employer's wage withholdings and FICA payroll taxes. If the employer's subsidy payments exceed the amount of wage withholdings or FICA payroll taxes, Treasury will reimburse the employer directly for the excess amount. The payroll tax credit cannot be taken by the employer or other named entity until the unsubsidized payment is received.

COBRA Premium Subsidy

The Act provides a 65% federal subsidy of COBRA premiums for eligible individuals for a maximum of nine months. The subsidy period does not extend the period of COBRA coverage that would otherwise apply to that qualified beneficiary from the original qualifying event date. The subsidy is calculated based on the COBRA premium that the eligible individual otherwise would have been required to pay. If an employer already provides a subsidy (e.g., under a severance plan), the employee would only need to pay 35% of the portion of the premium not paid by the employer (i.e., the employee contribution) and the employer may only apply a payroll tax credit against the 65% portion not already paid by the employer voluntarily (i.e., the employee contribution).

Eligibility for the subsidy ends when the individual becomes eligible for dental coverage under another group health plan or becomes eligible for benefits under Medicare. A qualified beneficiary's failure to notify the group health plan of the cessation of eligibility for the subsidy may subject the qualified beneficiary to a penalty of 110% of the amount of the subsidy. No penalty shall be imposed if it is shown that such failure is due to reasonable cause and not willful neglect occurring after the date of enactment. Coverage under a health flexible spending account (FSA) is not eligible for the subsidy, although a health reimbursement (HRA) generally is covered by the new law.

Individuals with an adjusted gross income exceeding \$145,000 (for single filers) or \$290,000 (for joint filers) are not eligible for the subsidy and the subsidy is phased out for income above \$125,000 (for single filers) or \$250,000 (for joint filers). Qualified beneficiaries that receive subsidies during a plan year in which they exceed these income limits must repay the subsidy by adding it to their tax liability on their individual income tax return. Individuals who do not want to receive the subsidy may decide to permanently waive it.

Qualifying Event

A qualified beneficiary is eligible for the COBRA subsidy if he or she is involuntarily terminated from employment on or after September 1, 2008 through December 31, 2009, including a spouse or dependent who makes an independent election of the involuntary termination qualifying event. The Act does not define "involuntary termination", however; guidance is expected from the DOL within 30 days of enactment. Those qualified beneficiaries who elected COBRA after an involuntary termination prior to the enactment date and who meet the eligibility requirements may receive the subsidy following the date of enactment, but the premium subsidy is not retroactive prior to the date of enactment.

Special Election Period

A notice must be provided within 60 days of enactment to all individuals who terminated employment during the applicable time period (not just to individuals who were terminated involuntarily). The special election period, begins on the date of enactment and ends 60 days after the notice of the special election period is provided to the qualified beneficiary who is eligible for a reduced premium and who has not elected COBRA as of the date of enactment. The coverage elected under this special election right begins with the first period of coverage beginning on or after the date of enactment and is not retroactive to the original date that benefits terminated under the plan. Any resulting gap in coverage beginning with the qualifying event and ending on the effective date of the COBRA subsidized period will not be counted as a break in coverage for the purposes of the 63-day rule under HIPAA's portability rules. This special election period opportunity also is extended to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment. For example, a qualified beneficiary who was terminated from COBRA coverage because he or she was unable or failed to continue paying the premium would be extended the special election period. A violation of the new notice requirements is also a violation of the notice requirements of COBRA.

Additional Notice Obligations

The U.S. Department of Labor, in conjunction with the Departments of Treasury and Health and Human Services, will provide guidance and model notices within 30 days of enactment, and these notices must continue to be provided for the duration of the subsidy period. For individuals who had elected COBRA coverage as of the date of enactment and whose qualifying event falls within the dates referred to above, a notice must be given within 60 days of the enactment describing the availability of the subsidy and the method of establishing eligibility.

Plan Enrollment Option

While not obligated to do so, employers or plan sponsors may provide qualified beneficiaries who are eligible for the COBRA premium subsidy the opportunity to change dental plans. Under this option, the qualified beneficiary can change from the dental plan provided at the time of the qualifying event to any dental plan option that has the same or a lower premium as the individual's previous coverage offered by his or her employer or plan sponsor to active employees. The qualified beneficiary must elect such alternative coverage within 90 days of the date of when the notice of the option is provided.

Reimbursements

If the full COBRA payment is received during the 60-day period beginning on the first of the month after the date of enactment and the qualified beneficiary is determined to be eligible for the subsidy, the entity to which such payment is made (such as the employer, plan sponsor, or insurer of an insured plan) shall reimburse the amount in excess of 35% or provide a credit against future payments unless the credit will not be used within 180 days from the original receipt of payment date. Reimbursements will be made within 60 days of payment of the full premium. If it is determined later that the credit will not be used within the 180-day period, reimbursement will be made within 60 days of that date.

What Actions Are Necessary for Employers or Plan Administrators as clients of Delta Dental of Colorado?

1. Identify eligible individuals who were involuntarily terminated on or after September 1, 2008.
2. Update COBRA notices and related materials to include information about the subsidy and eligibility requirements. Guidance and Model Notices should be available from the U.S. Department of Labor within 30 days of enactment.
3. Notify individuals within 60 days of February 17, 2009 of their new election period and include the forms necessary to determine eligibility for the subsidy.
4. Develop procedures for handling the subsidy paid by the eligible individual and coordinate with payroll systems the method of claiming the remaining 65% as a payroll tax credit; and then a method for changing the premium back to 100% when the subsidy ends.
5. Develop a method of handling reimbursements of overpayments.
6. Determine whether to apply the "Plan Enrollment Option" referred to above.
7. Understand how the COBRA claims experience and administrative costs may be impacted by this new Law.

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