

# Legislative Update

## Employee Benefits



Services offered through Mesirow Insurance Services, Inc.

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**REVISED**

## Major COBRA and Other Benefit Changes Included in New ARRA

On Tuesday, February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA includes substantial changes to COBRA administration and transportation plan limits.

The major areas of ARRA relating to COBRA and other benefits are described below.

### COBRA

COBRA changes take effect on the first coverage month following the date ARRA is enacted (*March 1, 2009* for most plans). The Department of Labor (DOL) has 30 days in which to issue model notices. The Treasury Department is responsible for issuing other guidance and regulations.

### COBRA Subsidy

ARRA provides for a 65% federal subsidy for up to nine months for individuals who became eligible for COBRA coverage on or between September 1, 2008 and December 31, 2009. Subsidy-eligible individuals must meet the following qualifications:

- The initial qualifying event must be for *involuntary employment termination* for reasons other than gross misconduct.
- The subsidy is available for all coverage connected with that qualifying event *except health FSAs, which are specifically excluded.*
- The qualified beneficiary *must elect COBRA* or applicable state continuation coverage (both small employer and post-COBRA coverage).

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- The qualified beneficiary must have had a modified adjusted gross income (Modified AGI) of *less than \$125,000 if single, or \$250,000 if married filing jointly*, for each tax year in which the subsidy is received.

The method for the fourth eligibility criterion is complicated. Please contact your tax advisor for more information.

Because ARRA becomes effective quickly, some eligible individuals may end up paying the full COBRA premium while employers implement these changes. For March and April of 2009, an employer may choose either to reimburse the amount of the subsidy, or credit the premiums toward later months.

Once an individual becomes eligible (not necessarily enrolled) for other group medical coverage, the subsidy ends. He/she is required to notify the plan of the end of his/her eligibility for subsidy, and may be penalized for failing to do so.

**In our previous version of this Legislative Update, we reported that dental and vision plans were not considered eligible for premium reduction under ARRA. New information has emerged stating the following:**

**All group health plans, as defined by**

**ERISA Part 607, are eligible for the premium reduction/subsidy under the new ARRA program. This includes medical, dental and vision, but excludes flex accounts, EAP and on-site clinic services.**

### Second COBRA Election Period

Those who would otherwise qualify for the COBRA subsidy but did not elect COBRA when first offered have a second election period of 60 days. This election period starts when a new election notice is sent. If these individuals elect COBRA, they become eligible for **coverage dating back to March 1, 2009** - not back to the date of their original loss of coverage.

The period of time between the qualifying event date and the COBRA coverage effective date does not count toward the HIPAA 63-day gap in coverage rules for determining creditable coverage.

### New COBRA Coverage Option

Employers have the option to offer all subsidy-eligible individuals a new "Plan Enrollment Option." This *voluntary* provision allows subsidy-eligible individuals to change to another health plan offered by the employer to active employees (if any) as long as the premium is less than their current COBRA coverage.

The new COBRA coverage option period is 90 days, and starts when a notice describing the option is sent to the eligible individual. This option must be offered to all subsidy-eligible individuals including those with second election rights and those with qualifying events that occur later in 2009.

#### Employment Tax Offset for COBRA Subsidy

Eligible qualified beneficiaries pay the 35% reduced COBRA premium each month. The employer then recoups the 65% share from the federal government by claiming a credit against their federal payroll taxes (including income tax withholding), or through direct payment from the government.

Employers will be required to file a report to accompany claims for credits. The report must include an attestation of the involuntary termination of the covered employees, a calculation of the offsets, estimated offsets for the next reporting period, the TINs of covered employees, the amount of the subsidy provided to each individual, and information as to whether the subsidy provided was for individual or family coverage.

#### New Notices

The new information is required to become part of the standard COBRA notice for qualifying events for the duration of the subsidy and must include:

- Description of the subsidy
- Description of the extended election period available to subsidy-eligible individuals who do not have a COBRA coverage election in place as of the date of enactment
- Description of the individual's obligation to inform the plan if he/she becomes eligible for Medicare or another group health plan
- Forms necessary for establishing eligibility for the subsidy
- Contact information for the plan administrator

- A description of alternative COBRA coverage options, if the employer elects to provide these

The legislation directs specific government agencies to develop model notices for this purpose within 30 days of the bills enactment.

The DOL has an expedited time frame of 15 business days to review any subsidy-related complaints made by qualified beneficiaries. The Treasury will be monitoring compliance and reporting on the program's effectiveness.

ARRA changes to COBRA provisions are estimated to cost \$24 billion.

#### Steps You Can Take Today

With the March 1 effective date of ARRA's COBRA changes looming, below are some steps you can take today to get ready:

1. Identify all individuals meeting the subsidy eligibility criteria described above, whose COBRA-qualifying event occurred on or between September 1, 2008 to present, whether or not they elected COBRA.
2. Confirm all current COBRA participants who have already paid their March premiums. Determine your policy for how March overpayments will be handled: reimbursed or credited toward future COBRA premium payments.
3. Begin revising your COBRA communications to include required new notification language.\*
4. Within 60 days of enactment of ARRA (by approximately April 17, 2009), notify all subsidy-eligible individuals of the changes to COBRA, and send notice of second COBRA election period (with coverage **retroactive only to March 1, 2009**) to COBRA-eligible individuals who previously waived COBRA coverage.

**\*As model forms and government guidance continue to evolve and become available, we will keep you updated.**

#### Additional ARRA Benefits Changes

In addition to COBRA changes, ARRA will have an impact on these benefits:

#### Increase in Transit Pass Limit for Transportation Plans

ARRA also changes the monthly reimbursement limits for transit passes. Before ARRA, the monthly limits were \$120 for transit passes and vanpooling combined, \$230 for parking and \$20 for bicycles. Starting in March, 2009 and continuing through December, 2010, the limit for transit passes will match the parking limit of \$230.

#### Health Information Technology and HIPAA Privacy and Security

ARRA allotted about \$17 billion to invest in health information technology, providing incentives to hospitals and other providers to begin using electronic health records. Significantly, the law expands the reach of HIPAA to certain entities that would normally not qualify as business associates, namely those that maintain or access personal health records or are classified as health information exchange organizations. The Department of Health and Human Services is required to issue regulations within 180 days of February 17, 2009.

Sources: *Infinisource*  
*Allied Benefits*

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