

**MARCH 2009**

**Benefits and HR tips brought to you by the insurance specialists at The Wright Group Services.**

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**ACTION REQUIRED TO IMPLEMENT STIMULUS ACT CHANGES TO COBRA COVERAGE**

The new COBRA provisions established by The American Recovery and Reinvestment Act of 2009 (ARRA) require employers and plan administrators to take prompt action to implement the new COBRA procedures. Generally, plan administrators and employers should take the following action now:

- Review records to identify employees who were involuntarily terminated from employment since September 1, 2008;
- Identify which of these assistance-eligible individuals are currently receiving COBRA coverage and entitled to the special enrollment period;
- Update COBRA materials to comply with the new requirements;
- Determine whether to permit individuals to elect a different health plan option when electing COBRA coverage;
- Review severance policies to revisit the issue of any employer COBRA premium contributions;
- Notify the appropriate individuals of their new rights and responsibilities under ARRA;
- Develop processes and procedures for the administration of the COBRA subsidy; and
- Keep informed about the status of the soon to be released model forms and regulations.

**COBRA SUBSIDIES**

On February 17, 2009, President Obama signed into law H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA). Among many other provisions designed to encourage economic recovery, Title III of ARRA expands the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation Coverage to provide a 65 percent federal subsidy toward an eligible worker's COBRA premium for up to 9 months. The provisions in ARRA providing this subsidy are effective as of the date of the President's signing. A brief summary of the newly enacted COBRA subsidy follows.

**What Is The COBRA Subsidy?**

Eligible workers will receive a 65 percent subsidy toward their COBRA continuation premium for up to 9 months. The Treasury Department will administer the subsidy, providing employers or health plans, if they administer COBRA benefits, with a credit against payroll taxes for the cost of the subsidy. The subsidy would terminate the date the individual becomes eligible for any new employer-sponsored health care coverage or Medicare coverage.

**For What Coverage Is The Subsidy Available?**

The federal subsidy is available for COBRA continuation coverage and for state programs providing comparable continuation coverage. The subsidy is not available for coverage under a health flexible spending arrangement.

**Who Is Eligible For The COBRA Subsidy?**

Individuals who have been involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and who have annual incomes of less than \$125,000 (single) or \$250,000 (joint filers) for the taxable year in which the subsidy is received (i.e., either 2009 or 2010) are eligible for the COBRA premium assistance, along with their families. If the premium subsidy is provided to an individual whose income exceeds \$145,000 (single) or \$290,000 (joint), then the amount of the premium subsidy for all months during the

taxable year must be repaid. For taxpayers with income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium subsidy for the taxable year that must be repaid is reduced proportionately.

### **Do Any Special Enrollment Rights Exist?**

Qualified individuals who initially decline COBRA coverage prior to the enactment of ARRA would be given an additional 60 days after they receive notice of the special election period to elect to receive the subsidy. The election period begins on the date of the enactment of ARRA. The special election opportunity is also available to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment, for example, because the beneficiary was unable to continue paying the premium.

Federal COBRA law provides that a group health plan must allow an eligible individual to choose to continue with the coverage in which the individual is enrolled as of the qualifying event. However, ARRA allows group health plans to provide a special enrollment right to allow eligible individuals to elect different coverage under the plan in electing COBRA continuation coverage. Further, even though the premium subsidy is only for 9 months, the different coverage elected must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent a COBRA terminating event).

### **What Are The Notice Requirements?**

COBRA notices must include information on the availability of the premium assistance and must be provided to all individuals who terminated employment during the applicable time period, not just to individuals who were involuntarily terminated. The Department of Labor has 30 days after the enactment of ARRA to issue model notices.

### **How Is The Subsidy Administered?**

The subsidy is generally administered as a reimbursement. The entity to which premiums are payable will be reimbursed by the amount of the premium for COBRA coverage that is not paid by an eligible individual on account of their 65 percent premium reduction. An entity is not eligible for subsidy reimbursement, however, until it has received the reduced premium payment from the eligible individual. The entity to whom the federal reimbursement is payable is either (1) the multiemployer group health plan, (2) the employer maintaining the group health plan subject to federal COBRA, or (3) the insurer providing coverage under an insured plan.

The entity that is eligible for reimbursement may elect to offset its payroll taxes for purposes of reimbursement. To the extent that such entity has liability for income tax withholding from wages or FICA taxes with respect to its employees, the entity is reimbursed by treating the amount that is reimbursable to the entity as a credit against its liability for these payroll taxes. That is, the credit for the reimbursement is treated as a payment of payroll taxes. Any reimbursement for an amount in excess of the payroll taxes owed is treated in the same manner as a tax refund. Entities wishing to claim reimbursements will be required to file certain reports, including an attestation of the involuntary termination of employment of each covered employee for which reimbursement of premiums is claimed.

Under the new law, eligible former employees, enrolled in their employer's health plan at the time they lost their jobs, are required to pay only 35 percent of the cost of COBRA coverage. Employers must treat the 35 percent payment by eligible former employees as full payment, but the employers are entitled to a credit for the other 65 percent of the COBRA cost on their payroll tax return. Employers must maintain supporting documentation for the credit claimed. This includes:

- Documentation of receipt of the employee's 35 percent share of the premium.
- In the case of insured plans: A copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier.
- Declaration of the former employee's involuntary termination.

### **What Is The Effective Date Of The COBRA Subsidy?**

These provisions are effective for periods of coverage beginning after the date of the enactment of ARRA. For group health plans using calendar months as the period of coverage, the subsidy applies beginning **March 1, 2009**. Additionally, eligible individuals who pay 100 percent of the premium required for COBRA for any month during the first 60-day coverage period after enactment will be reimbursed.

### **Is The Subsidy Retroactive?**

Although the subsidy is available to employees who were terminated starting September 1, 2008, the subsidy itself is not retroactive. It will apply only to periods of coverage beginning on or after March 1, 2009.

### **What Compliance Actions Should Be Taken Now?**

At a minimum, the following compliance actions should be undertaken as soon as possible:

Review records to identify employees who were involuntarily terminated from employment since September 1, 2008;

Update COBRA materials to comply with the new requirements;

Determine whether to permit individuals to elect a different health plan option when electing COBRA coverage;

Review severance policies to revisit the issue of any employer COBRA premium contributions;

Notify the appropriate individuals of their new rights and responsibilities under ARRA;

Develop processes and procedures for the administration of the COBRA subsidy; and

Keep informed about the status of the soon to be released model forms and regulations.

### **Where Can I Get More Information?**

For a copy of the new law, ARRA, see: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.00001>;

For general information regarding COBRA, see: <http://www.dol.gov/dol/topic/health-plans/cobra.htm>

Your representative from The Wright Group is also available to assist you with any questions

## **CHILD HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009**

On February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009 (the "Act"). The state children's health insurance program ("CHIP") provides health insurance for children whose families cannot afford private healthcare but do not qualify for federal Medicaid. The Act expands CHIP by providing additional special enrollment rights related to group health plan coverage. The new law also permits state subsidies of employer-provided group health premiums for eligible children and families and imposes new notice and disclosure obligations for employers that maintain group health plans.

The Wright Group Services Legislative Brief provides you with an overview of the Act.

### **Special Enrollment Rights**

Currently, group health plans must provide special enrollment rights to certain individuals who lose eligibility for other health coverage or who acquire a new spouse or dependent. The Act extends these special enrollment rights to employees and dependents who lose eligibility under a Medicaid plan or CHIP and employees and dependents who become eligible for a premium assistance subsidy under Medicaid or CHIP, as described below. These individuals must be given 60 days after the loss of coverage or determination of eligibility for assistance to request coverage under the group health plan. The effective date for these new special enrollment rights is April 1, 2009.

### **Premium Assistance Subsidy**

The Act allows states to offer eligible low income children and their families a premium assistance subsidy to help pay for qualified employer-sponsored coverage. Qualified employer-sponsored coverage means a group health plan or health insurance coverage offered by an employer that (i) qualifies as creditable coverage as a group health plan under the Public Health Service Act, (ii) for which the employer contribution for the coverage is at least 40% and (iii) that is offered in a non-discriminatory manner. Benefits provided under a health

flexible spending arrangement or high deductible health plan are not considered qualified employer-sponsored coverage.

States that provide a premium assistance subsidy may choose to pay the subsidy as a reimbursement to an employee for out-of-pocket expenses or directly to the employer. However, employers may choose to opt out of being directly paid a premium assistance subsidy on behalf of an employee.

### **Notice Requirements**

The Act requires employers that maintain group health plans in states that provide medical assistance under a Medicaid plan or child health assistance under a CHIP in the form of a premium assistance subsidy to notify their employees in writing of the potential opportunities available for premium assistance. The Department of Health and Human Services ("HHS") must develop national and state-specific model notices for use by employers by February 4, 2010. Employers may provide the notice along with plan materials notifying the employee of health plan eligibility, open enrollment materials or the summary plan description. The effective date of the notice requirement is the first day of the plan year beginning after the date on which model notices are first issued.

### **Disclosure to States**

Under the Act, administrators of group health plans must disclose to the state, upon request, information about the benefits available under the plan if the plans' participants and beneficiaries are also covered by Medicaid or CHIP. This information is required so that the state may determine the cost-effectiveness of providing premium assistance subsidies and may provide supplemental coverage. The Act directs HHS and the Department of Labor to jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group that will develop a model coverage coordination disclosure form for use by plan administrators. The effective date for use of the model form is the first day of the first plan year beginning after the date on which the form is first issued.

**Penalty for Noncompliance with Notice and Disclosure** The Act provides for civil penalties of up to \$100 a day for failure to comply with the new notice and disclosure requirements.

Please contact your representative from The Wright Group with any questions.

## **COLORADO LEGISLATIVE UPDATE**

There are a number of bills making their way through the legislature that impact health insurance and health care. Here is a brief summary of three:

- **Wellness Incentives** (HB-1012) In a refreshing show of bi-partisan unanimity around a common sense idea, this bill allows individual and small group carriers (1-50 lives) to offer incentives for participation in wellness and prevention programs. Incentives can include premium or co-insurance discounts. Carriers are given flexibility in determining the types of programs offered as long as participation is voluntary and the achievement of specific outcomes is not required to receive the incentive. The bill awaits action in the Senate.
- **Limited Benefit Plans for HMOs** (HB-1143) Sponsored by TWG Services consultant and state legislator, Spencer Swalm, this bill authorizes HMOs to offer affordable, limited benefit plans to low income, uninsured working people. At the front end, these products would look like traditional HMO products with low co-pays designed to help keep minor problems from becoming expensive medical emergencies. Where they differ is in having relatively low annual benefit caps: in the \$35,000 to \$100,000 range. The underlying philosophy is that some insurance is better than none for the estimated 800,000 Coloradans without coverage. Although the bill provoked lively debate in the House, it ended up passing with strong bi-partisan support. It also attracted considerable press attention, including this story on Channel 4 News: <http://cbs4denver.com/politics/health.insurance.bill.2.933198.html> and this Rocky Mountain News editorial: <http://www.rockymountainnews.com/news/2009/feb/20/cut-rate-options/>. The bill has gone to the Senate.

- Medicaid Hospital Provider Fee (No title as of this writing) widely considered the center piece of Governor Ritter's 2009 health care agenda, this bill imposes a new fee on hospitals that allows the state to draw down additional federal Medicaid funding. The moneys will be used to increase Medicaid reimbursement levels and expand Medicaid eligibility to certain low income groups. The fees are not supposed to be passed on to consumers. Complex negotiations on which hospitals will pay and how much (payers will generally serve more affluent areas), and which hospitals will be recipients and how much (hospitals serving less affluent areas), have gone on for months. Although the hospital fee is supposed go away if federal support for this program ends, hospitals are justifiably nervous that once such fees/taxes start, they rarely, if ever, end.