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New COBRA Subsidy Requirements Impact Employers, Insurers and Health Plan Participants

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The American Recovery and Reinvestment Act of 2009, signed into law by President Barack Obama on Feb. 17, is an unprecedented economic stimulus plan. ARRA contains a number of provisions designed to assist unemployed workers and their families, including federal tax cuts and credits, expanded unemployment benefits and federally subsidized COBRA premiums. The new COBRA subsidy requirements significantly impact employers, insurers and health plan participants.

Consolidated Omnibus Budget Reconciliation Act

The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, is a law that requires certain group health plans to offer continued group health plan coverage to employees and their spouses and dependent children who lose coverage due to qualifying events such as termination of employment, death, disability or divorce. Continuation of coverage must generally be provided for up to 18 months. Plan sponsors may charge covered participants the full cost of the COBRA premium, plus a 2 percent administrative fee. In this economic downturn, many unemployed workers and their families have been unable to afford COBRA premiums and, as a result, have lost group health plan coverage.

COBRA Premium Subsidy

To alleviate the burden of paying the full COBRA premium, ARRA provides that the federal government will subsidize 65 percent of the COBRA premium paid or payable by employees and their covered spouses and dependent children who lose group health plan coverage as a result of an involuntary termination of employment between Sept. 1, 2008 and Dec. 31, 2009. These eligible individuals are referred to as "assistance eligible individuals" or "AEIs." As a result, AEIs are only required to pay 35 percent of the COBRA premium, making COBRA significantly more affordable for unemployed workers and their families.

Although the federal government subsidizes the COBRA premiums, employers and insurers must advance the cost of the 65 percent subsidy and request reimbursement from the federal government through a payroll tax credit. ARRA provides an initial two-month grace period to give employers and insurers time to comply with the new law. During this grace period, AEIs may be required to pay their full COBRA premiums, as long as they are later reimbursed or compensated for the amount of the subsidy.

This COBRA premium subsidy must be provided for a maximum period of nine months. The maximum subsidy period will end earlier if the maximum COBRA period ends sooner than the nine month period, the AEI fails to pay the COBRA premium or the AEI becomes eligible for coverage under another group health plan or Medicare.

Employers who voluntarily subsidize all or a portion of COBRA premiums will have their tax credit opportunities reduced proportionately. For example, if an employer pays 100 percent of an AEI's COBRA premium, the federal government will not subsidize the AEI's premium and the employer will not receive a tax credit for the premium payment. Similarly, if the AEI is only required to pay $300 of an $800 monthly premium with the employer paying the remaining $500, the AEI will be eligible for a subsidy of $105 (35 percent of $300) and the employer will be eligible for a tax credit of $195 (65 percent of $300).

ARRA also permits employers to offer AEIs the choice of electing a lower cost coverage option than the health care plan they were enrolled in during employment. Employers must notify AEIs if they do choose to provide such lower cost options. If a lower cost option is offered, AEIs must elect it within 90 days of receiving notice of the lower cost coverage option.

Although there are no income restrictions on receiving the federal subsidy, certain higher income individuals will not receive any benefit from the subsidy because the IRS will recapture the subsidy through an additional tax imposed on such individuals. The subsidy will be completely recaptured for individuals who earn more than $145,000 per year (or $290,000 per year for joint filers) and will be phased out for individuals with incomes starting at $125,000 per year (or $250,000 per year for joint filers). Higher income individuals may permanently waive their rights to the COBRA premium subsidy if they do not wish to be subject to the additional tax.

Extended COBRA Election Period

AEIs who were involuntarily terminated and who lost health care coverage between Sept. 1, 2008 and the date ARRA was passed, Feb. 17, 2009, are eligible for an extended COBRA election period if they (1) did not elect COBRA coverage before ARRA was passed or (2) elected but terminated such coverage before ARRA was passed. This provision is designed to provide individuals who may have declined or terminated COBRA coverage due to its high cost the opportunity to obtain COBRA coverage at the federally subsidized rate.

COBRA Notice Requirements

ARRA requires that employers and insurance companies notify group health plan participants of their new COBRA rights. The Department of Labor has provided four model notices. Notice must be provided as soon as possible and in any event no later than April 18, 2009.

Further Guidance

The Department of Labor and Treasury Department have issued some important COBRA subsidy guidance since the enactment of ARRA. See, for example, IRS Notice 2009-27 and Premium Reduction FAQs for Employers. They are expected to continue issuing guidance that clarifies issues pertaining to these new COBRA requirements. For more information, visit http://www.dol.gov/cobra and http://www.irs.gov/newsroom/article/0,,id=204505,00.html

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