



COBRA Benefits Affected by American Recovery and Reinvestment Act

As part of our ongoing effort to provide accurate, timely information to our business partners, we have created this overview to help you understand the recent changes to COBRA benefits. This overview is provided for your information only and does not constitute legal advice. If you need legal advice, you must seek the opinion of a qualified attorney.

On February 17, 2009, President Obama signed into law H.R.1, the American Recovery and Reinvestment Act (the “Act”). Section 3001 of this Act provides a 65 percent federal subsidy of COBRA premiums for employees who were involuntarily terminated between September 1, 2008 and December 31, 2009, subject to certain income limits and other restrictions. The premium subsidies are generally available for up to nine months and are to be recovered by credits against payroll taxes paid by multi-employer plans, employers, or insurers.

The subsidy applies to insured and self-insured group health plans that are subject to federal or state continuation of coverage laws, and includes dental and vision plans. The subsidy does not apply to health Flexible Spending Accounts offered under a cafeteria plan. The operational impact of the subsidy on state “mini COBRA” laws (COBRA-like continuation requirements for employers with fewer than 20 employees, such as those in Massachusetts) is being assessed now. Blue Cross Blue Shield of Massachusetts will work with these small accounts to collect the members’ reduced premiums and will be responsible for collecting the federal subsidy. As more specific details on implementation become available, we will communicate them to you.

COBRA Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amends sections of the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act (PHSA). COBRA requires group health plans to offer certain individuals (referred to as “qualified beneficiaries”) continued health coverage if they would otherwise lose their group health plan coverage as a result of a specific qualifying event (such as employment termination). Continuation coverage under the group plan is available for a specified period of time at applicable group rates. Under COBRA, these qualified beneficiaries are typically required to pay the full cost of such coverage. Small employers (generally those employing fewer than 20 employees in the previous year) are not subject to COBRA, but are subject to a comparable state law requirement in Massachusetts.

Eligibility

Qualified beneficiaries eligible for COBRA because of the covered employee’s involuntary termination of employment between September 1, 2008 and December 31, 2009, are eligible for a federal subsidy of 65 percent of the COBRA premium. Those who were involuntarily terminated and eligible for COBRA on or after September 1, 2008, but prior to February 17, 2009, are eligible to receive the subsidy on a go-forward basis. The subsidy is reduced or phased out for individuals with income over a certain amount (\$125,000 or \$250,000 for those filing jointly).

Those qualified beneficiaries eligible for the subsidy are referred to as “assistance eligible individuals” (AEI) and include:

- the covered employee;
- the covered employee’s spouse (as defined by federal law);
- the covered employee’s dependent children.

If the covered employee does not elect COBRA, a covered spouse or covered dependent of the involuntarily terminated covered employee would have a separate election right and may still qualify as an AEI.

While certain group health plans may offer COBRA-like continuation of coverage to individuals who are not entitled to COBRA under federal law (e.g., same sex spouses or domestic partners), these individuals might not be eligible for the subsidy. Further guidance from the Department of Labor or Internal Revenue Service may clarify this.

AEIs Not Currently on COBRA

Qualified beneficiaries who experienced an involuntary termination of employment between September 1, 2008 and February 17, 2009, and did not elect COBRA coverage during their initial 60-day election period, are also eligible for the subsidy. These AEIs, as well as those who had COBRA coverage but let the coverage lapse (e.g., for failure to pay premiums), must be provided another opportunity to elect COBRA coverage during a second 60-day election period.

Coverage for these AEIs who elect COBRA will be provided on a prospective (i.e., go-forward) basis and will begin on the first day of the employer’s billing cycle on or after February 17, 2009. Coverage will not extend back to the original qualifying event (i.e., termination of employment) but the COBRA eligibility period is still measured from the date of the original qualifying event. Please note, however, that under current guidance, the additional 60-day election period does not apply to “mini COBRA” state continuation coverage for employers with 2-19 employees.

Example:

- Susan is involuntarily terminated on October 31, 2008, and loses her employee health coverage.
- Susan receives a COBRA election notice from her employer but fails to elect coverage by the December 30, 2008 deadline.
- Within 60 days after enactment of the Act, Susan’s employer (who is subject to federal COBRA) must send her another COBRA notice offering her another opportunity to elect COBRA; the employer provides the notice on March 31, 2009.
- Susan has an additional 60 days (to May 30) to make this election and she makes the election on May 15, 2009.
- Susan’s coverage is retroactive to March 1, 2009 (her plan offers month to month coverage so this is the first day of the billing cycle on or after the Act’s enactment on February 17).
- Susan’s COBRA eligibility period is unchanged, so her 18-month eligibility is still measured from the date of her original qualifying event on October 31, 2008 and runs through April 30, 2010.

Subsidy Period

The subsidy is available for up to nine months but will end earlier if an AEI reaches the end of his or her maximum COBRA coverage period, or if the AEI becomes eligible for other group health coverage or Medicare. If an AEI becomes eligible for other group health coverage or Medicare, the AEI must notify the plan that he or she no longer qualifies for the COBRA subsidy. Failure to do so is punishable by a penalty equal to 110 percent of the subsidy received after becoming eligible for other coverage.

It is important to note that this standard differs from original COBRA, which has coverage cease upon the individual's enrollment in another group health plan. There may be instances where a qualified beneficiary declines to enroll in another employer's group health plan and instead continues COBRA coverage through the employer's plan. A qualified beneficiary or AEI may still do that, but the COBRA subsidy under the Act will end as soon as the AEI becomes eligible to enroll in the other plan.

How the Subsidy Works

The subsidy from the federal government will be 65 percent of the premium owed by the AEI, leaving the AEI responsible for paying the other 35 percent. The subsidy is administered by the employer, plan, or insurer (depending on the type of plan) and that entity will be reimbursed by the government through payroll tax credits.

The 65 percent COBRA subsidy applies to the AEI's actual premium responsibility; if an employer pays a portion of the COBRA coverage for the AEI, then the federal subsidy is limited to 65 percent of the portion paid by the AEI.

Example:

- John's total COBRA premium is \$1,000 per month.
- John's former employer pays 50 percent of the premium (\$500) and John pays the remaining \$500.
- John, as an AEI entitled to the subsidy, is now only responsible for 35 percent of the \$500 premium (\$175), and his former employer must credit the federal subsidy amount equal to 65 percent of \$500 (\$325). The employer would then recover the subsidy amount via an offset against payroll taxes that the employer files with the federal government.

For "mini COBRA" state continuation coverage for employers with 2-19 employees, the above example would be the same for John, however, his insurer, Blue Cross Blue Shield of Massachusetts, would then recover the subsidy amount via an offset against payroll taxes that the insurer files with the federal government.

The IRS has released detailed information to help employers claim credit for the subsidy. Visit www.irs.gov and select **Update on Recovery Tax Provisions for Individuals and Businesses**; then **guidance for employers, including an updated Form 941**, as well as **information for qualifying individuals**.

Right to Waive Subsidy

Employers, plans, and insurers may treat all qualified beneficiaries who lost coverage because of an involuntary termination of employment between September 1, 2008 and December 31, 2009, as eligible for the subsidy, regardless of their income level. If the individual has income over a certain amount, then receipt of the subsidy will impact the individual's income tax for that particular year (i.e., the government will seek to recoup the subsidy via income tax filing). These individuals may also choose to waive the subsidy and pay the full COBRA premium to avoid tax consequences.

Electing Other Coverage

Under COBRA, qualified beneficiaries are typically only permitted to continue the coverage they had in effect at the time of their qualifying event. The Act gives employers the option of allowing AEIs to change their health insurance coverage when making a COBRA election under the employer's plan. The new coverage option must have the same or lower premiums and must be an option also available to active employees under the plan. If the employer gives AEIs the opportunity to change coverage, the AEI must elect to change his or her coverage within 90 days of receipt of the COBRA election notice.

New Notice Requirements

The Act requires that employers modify their standard COBRA notices or provide supplemental notices to all individuals entitled to elect COBRA between September 1, 2008 and December 31, 2009. These notices must include:

- A description of the eligibility requirements for the COBRA subsidy
- The name, address, and phone number of the plan administrator who can provide more information
- For employers subject to federal COBRA, a description of the additional election period for those AEIs not currently on COBRA (i.e., those involuntarily terminated between September 1, 2008 and February 17, 2009)
- A description of the qualified beneficiary's obligation to notify the plan if he or she becomes eligible for coverage under another group health plan or Medicare, and a description of the penalty for failure to notify the plan
- A description of the qualified beneficiary's right to a reduced premium and any conditions on entitlement to the reduced premium
- A description of the election of a different coverage option described above (if the employer chooses to offer this option to AEIs)

Model notices are now available on the Department of Labor website: www.dol.gov/cobra.

Additional Guidance

Additional guidance is expected on certain aspects of the COBRA subsidy program, however, in the meantime, employers may need to:

Identify individuals who are eligible for the COBRA subsidy. This includes only individuals who lost coverage owing to an involuntary termination of employment on or after September 1, 2008, but who are otherwise eligible for COBRA, including individuals whose COBRA election period has already expired.

Identify individuals who are eligible for "mini COBRA" state continuation coverage. In order for Blue Cross Blue Shield of Massachusetts to administer the subsidy, employers will need to identify individuals who qualify for "mini COBRA" state continuation coverage for employers with 2-19 employees.

Contact the plan's COBRA administrator, if applicable, about its process for notifying eligible qualified beneficiaries about their COBRA rights and the process for collecting subsidized premiums.

Notify (or work with the plan's COBRA administrator to notify) all eligible beneficiaries, including those who have not yet elected COBRA coverage, of their right to the COBRA subsidy.

Work with payroll staff or a vendor to determine how to file the required payroll taxes and report to the Treasury the subsidy amounts paid.

Again, additional information can be found on the Department of Labor web site: www.dol.gov/cobra.



MASSACHUSETTS