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The American Recovery and Reinvestment Act Contains Important Changes to COBRA Benefits; Guidance Pending

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 designed to address the current economic situation. This Act contains a temporary premium assistance provision that provides a federal subsidy of COBRA continuation premiums for qualified beneficiaries.

The American Recovery and Reinvestment Act provides a 65% federal subsidy for up to 9 months of COBRA for individuals who become eligible for COBRA coverage from September 1, 2008 through December 31, 2009 due to involuntary termination of employment. The Act permits these COBRA individuals to satisfy their COBRA premium by paying only 35% of the premium. Plan sponsors are permitted to reduce their payroll taxes to offset the lower premiums paid by qualified beneficiaries.

The Act creates a new special election period for those who have not elected COBRA and a new notice requirement to inform individuals about the opportunity to elect COBRA and receive a federal subsidy. The government is required to create a model notice for plan sponsors to use within a quick timeframe. Stirling Benefits, through our Washington D.C. Association (Society of Professional Benefit Administrators) will be following the regulatory guidance closely. The IRS and Treasury are expected to issue additional details in the near future regarding how the credit process will work, including tax filing and reporting requirements.

Who would be eligible for COBRA temporary premium assistance? Individuals who are eligible for COBRA coverage from September 1, 2008 through December 31, 2009 due to involuntary termination of employment that occurred during this same period. The full premium subsidy of 65% will not be available for individuals with annual incomes above \$125,000 (single) or \$250,000 (joint return). Subsidies are reduced for those with modified adjusted gross income up to \$145,000 (single) and \$290,000 (joint return). Temporary COBRA premium assistance applies to former covered employees, spouses and dependents.

When would the temporary premium assistance end? Eligible individuals are entitled to receive the subsidy for up to nine months. However, premium assistance would end on the first date that an individual is eligible for coverage under any group health plan or Medicare.

Coverage under any group health plan does not include coverage consisting of only dental, vision, counseling or referral services, coverage under a health reimbursement arrangement, a health flexible spending arrangement, prevention and wellness care, or coverage of treatment that is furnished in an on-site medical facility maintained by an employer and that consists primarily of first-aid services. COBRA qualified beneficiaries receiving premium assistance must notify the group health plan in writing when they become eligible for other coverage, or face a penalty (110% of the premium reduction).

Even if a COBRA qualified beneficiary did not obtain other coverage of the type listed above, premium assistance would end the earliest of nine months after the date of enactment of the stimulus package or at the end of the maximum period of continuation coverage.

Special COBRA Election Period - The Act creates a special COBRA election period for individuals who did not elect COBRA during their original election period that occurred sometime on or after September 1, 2008 or are currently in their COBRA election period and had not made the COBRA election as of the enactment date. This special COBRA election period begins with the enactment date of the law and ends 60 days after the plan sponsor provides the notice of availability of premium assistance. The enactment date of the law is February 17, 2009; the date President Obama signed the legislation.

What is the effective date of COBRA coverage for former workers electing COBRA under the special COBRA election period? According to the Act, COBRA coverage will begin on the first period of coverage beginning on or after the enactment date of the law. The Act refers to a period of coverage as a period for which premiums are charged.

Length of COBRA - COBRA coverage will not extend beyond the COBRA period that would have been required if COBRA had been originally elected. For example: If a worker was laid off on September 1, 2008 and did not elect COBRA, this worker, if he elected COBRA under the special COBRA election period, would be entitled to COBRA for the remaining months left of the original 18-month qualifying event that occurred on September 1, 2008. COBRA coverage would not be retroactive to September 1, 2008.

New Notice - The Act requires that a new notice must be provided by plan administrators within 60 days after the law is enacted to all workers let go since September 1, 2008 who became eligible for COBRA. The purpose of the notice is to inform these former workers of their new opportunity to elect COBRA and receive a subsidy from the federal government of 65% of the premium. The government is required to provide a model notice for use by March 17, 2009

Government-Crafted Model Notice - The Department of Labor, Treasury and the Department of Health and Human Services are required to create model notices to assist plan sponsors no later than 30 days after the date of enactment.

Who will send out the notice?

Because employers have a 60-day period to release the revised notices, some employers may choose to wait until the model notices are released before creating their own notices. Employers will have until April 17, 2009 to send the notices to qualified individuals. Stirling Benefits will confirm with each client the responsible party to release the notice. Stirling will not be able to make this determination until we receive the model notice from the government.

Notice Content - The law requires additional COBRA notice information to be given to all those workers laid off from September 1, 2008 through December 31, 2009. This additional notification may be met by amendment of existing COBRA notices or by inclusion of a separate document with your already existing COBRA notice.

According to the Act, the additional notification must include the following:

1. The forms necessary for establishing eligibility for premium reduction.
2. The name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with the premium reduction.
3. A description of the extended election period.
4. A description of the obligation of the qualified beneficiary to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for Medicare and the penalty for failure to do so.
5. A description, displayed in a prominent manner, of the qualified beneficiary right to a reduced premium and any conditions on entitlement to the reduced premium.
6. A description of the option to enroll in different coverage offered by the plan if the plan sponsor agrees to this option. The bill does not require this; it is optional.

In creating model COBRA notices, the government will incorporate these above elements.

Flexible Spending Accounts - COBRA premium assistance is not available for health flexible spending arrangements.

Reporting - Plan sponsors are required to submit reports to the Treasury detailing the amount of payroll taxes offset as well as estimated offsets for subsequent reporting periods.

Premium Assistance Reimbursement - The government subsidy is obtained through a reduction in payroll taxes. Any overstatement of the reimbursement will be treated as an underpayment of payroll taxes. The entity to whom COBRA premiums are payable is the entity entitled to the government reimbursement subsidy. In the case of a multi-employer plan, the entity entitled to the subsidy is the plan. In the case of any other group health plan, the entitled entity is the employer maintaining the plan.

Premium Subsidy Not Taxable - The premium assistance does NOT have to be included in the gross income of the COBRA qualified beneficiary.

Creditable Coverage - The law gives terminated workers some assistance in not triggering a 63-day break in coverage for HIPAA creditable coverage purposes. The time period beginning on the date of the qualifying event and ending with the day before the date of enactment of the Act will be disregarded for purposes of determining the 63-day break in coverage.

Action Plan – Steps to Take Now

Each employer should prepare a list of members who terminated employment or had another qualifying event since September 1, 2008. This information will be needed to identify who will need to get the extra notice of COBRA eligibility. Stirling Benefits will continue to analyze this legislation and provide you with guidance and action steps.

We look forward to working with you to keep your plan healthy and in compliance with the changing world of employee benefit regulations.