

BENEFITS ALERT 2009-03

To: All Clients & Friends of FBMC
Date: December 23, 2009

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Re: **COBRA Premium Subsidy Extended**

*A COBRA subsidy extension was signed into law **December 19, 2009** as part of the 2010 Defense Appropriations Act.*

Provisions in the Act piggy-back on the COBRA Premium Subsidy program which was included as part of the stimulus package (ARRA) enacted earlier this year as well as existing COBRA law.

The purpose of this Alert is to walk you through the key points as we know them today; the details will follow as additional guidance is provided by DOL.

The Defense Act contains five key points and requires immediate action.

- ✓ The Act extends the sunset period for the ARRA premium subsidy for an additional two months, from 12/31/2009 to 2/28/2010. This means the eligibility period is expanded to include the period between 9/1/2009 through 2/28/2010.

It is important to note that **unlike the original provisions found in ARRA**, the Act does **not** require the terminated employee to be eligible for COBRA on 2/28/2010; it only requires the individual to be involuntarily terminated by 2/28/2010.

Thus, for employers providing subsidized coverage that defers the COBRA start date, the COBRA subsidy period may commence into the future.

What is unclear is how long into the future as the Act has no stated termination date.

- ✓ The Act extends the duration or the maximum period for receiving the subsidy for an additional 6 months. This means an AEI may receive up to **fifteen months of subsidized coverage**.
- ✓ The Act contains a transition period beginning on 12/1/2009. During the transition: 1) any AEI whose subsidy expired and who did not continue COBRA at the "unsubsidized" amount must be given the opportunity to receive retroactive subsidized coverage; 2) alternatively an AEI who did continue to pay the full COBRA premium must be reimbursed for the excess premiums.
- ✓ Finally, and this is the action item, the Act requires two new special Notices regarding the new 15 month subsidy to all AEIs who are on COBRA on or after October 31st or whose qualifying event is a termination of employment occurring on or after October 31st.

Impact

The extension has been widely anticipated, yet from employer, provider, and administrator perspectives preparing for the subsidy extension so late in the year will be challenging.

Key will be issuing the required notices and DOL is expected to have model notices posted on their website within 30 days. We have spent the past few days gathering information in preparation for implementing the extension on behalf of our clients for whom we provide COBRA services.

The subsidy extension will surely impact self-funded plans. The extent will depend upon how much consideration (if any) was given to an extension of the subsidy during renewal.

Stop-Loss premium renewal rates were most likely based on the expectation that the subsidy would sunset 12/31/2009 and many

individuals on COBRA would not be renewing. Now that the subsidy has been extended, many individuals who would have been unable to afford COBRA will likely remain covered under COBRA.

Looking Ahead

There is a high probability an additional extension through 6/30/2010 will be forthcoming.

The House has already passed the Main Street Act and the Senate has a Jobs Bill pending. Both bills overlap with the Defense Act and both extend coverage into mid-2010. Notice requirements are similar to those in the Defense Act so come February (or the date of enactment) another slew of Notices will be generated.

The bills slightly deviate from ARRA. For example, coverage loss due to a reduction in hours would qualify for the subsidy under certain circumstances. Also, access to retiree health coverage would come with a blanket exception that the subsidy is ok regardless of whether it is the same or different from active coverage.

For additional information please contact the undersigned.

Definitions

COBRA. Legislation enacted in 1985. Acronym for Consolidated Omnibus Budget Reconciliation Act which established the continuation coverage rules for group health plans that are governed under ERISA, the Internal Revenue Code, and PHSA.

ARRA. Legislation enacted 2/17/2009. Acronym for American Recovery and Reinvestment Act which contains tax breaks for individuals and businesses, direct aid to states and individuals, and billions of dollars to modernize and improve the nation's infrastructure. The Act expands the scope of HIPAA's privacy and security provisions, provides temporary parity in certain transportation fringe benefits, and provides a temporary premium subsidy for COBRA benefits.

AEI. Under Section 3001 of ARRA, this is an Acronym for assistance eligible individual. Generally this is an individual who is a qualified beneficiary under COBRA resulting from an involuntary termination from **9/1/2008** through **2/28/2009** and who is eligible for the premium subsidy. The beneficiary must have been a beneficiary under the plan the day before the qualifying event; or a child born or adopted during the period of COBRA continuation coverage.

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