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COMPLIANCE ALERT
January 8, 2010

COBRA SUBSIDY EXTENSION

On December 19, 2009, the President signed into law the FY2010 Defense Appropriations Bill, which, as previously reported, includes provisions to extend the COBRA subsidy. The Department of Labor (DOL) released a fact sheet summarizing the new requirements. A copy is available at: http://www.dol.gov/ebsa/newsroom/fscobrapremiumreduction.html.

The Defense Bill made the following significant changes to the COBRA subsidy:

- Extended the eligibility period to include involuntary terminations through February 28, 2010;
- Changed the definition of an *assistance eligible individual* ("AEI") to condition eligibility for the subsidy based on the date of the involuntary termination (as opposed to the date of COBRA eligibility) and the actual election of COBRA coverage;[1]
- Increased the duration of the subsidy from 9 to 15 months. This applies to current AEIs as well as individuals who exhausted the 9-month reduced COBRA period before December 19, 2009; and
- Provides an extension of the grace period to pay the reduced COBRA premiums. To continue coverage and receive the discounted premium, individuals who reached the end of the 9-month maximum subsidy period prior to enactment of this legislation (e.g. December 1, 2009) will need to pay the 35% premium costs by February 17, 2010, or if later, 30 days after the plan administrator provides notice of the extension.
    - Individuals who continued to pay the full premium after the subsidy ended may have the overpayment credited against future payments or refunded.

Most of the subsidy rules remain in effect including:

- When an AEI becomes eligible for Medicare or other group health plan coverage, the subsidy ends;
- Expedited review of denials of the subsidy; and
- Income limitations for certain high income individuals who will be required to pay back all or a portion of the subsidy.

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[1] Under the revision, an AEI is the employee or a spouse or dependent child of the employee who:

- Has a qualifying event for continuation of coverage under COBRA or state law (e.g. mini-COBRA) that is the employee's involuntary termination of employment at any point from September 1, 2008 through February 28, 2010; and
- Timely elects COBRA coverage.

Also, there are new notification requirements. The plan administrator must provide the following individuals with a notification of the changes made by the Defense Bill to the COBRA subsidy:

- Individuals who experience a termination of employment on or after October 31, 2009 and lose health coverage must be provided this notice within the required timeframes for providing the Election notice;
- Individuals who are assistance eligible individuals must be provided a notice by **February 17, 2010**; and
- Individuals who are in a *transition period* must be provided a notice within the **first 60 days** of the transition period. It is important to note that this appears to be a different (and earlier) timeframe from the February 17, 2010 notification described above.

The "*transition period*" is defined as the period that begins immediately after the end of the 9-month subsidy period and before enactment of this legislation, where the premium reduction provisions of the 2010 changes would apply due to an extension from 9 to 15 months. Generally, this notification is provided to those individuals who lost eligibility for the subsidy after November 30, 2009 (when the original 9-month subsidy period expired for many AEIs) and before December 19, 2009.

Further clarification around the notification rules is needed. At this point, the DOL has not issued model notices to use in providing these notifications. Agency representatives have indicated the notices are forthcoming.

Action Items

- If you haven't already done so, sign up to receive an alert from the DOL as new information is available, including the model notices. You can sign up to receive email alerts at http://www.dol.gov/ebsa/cobra.html (the link to subscribe is at the bottom of the page).
- Discuss changes under the Defense Bill with any COBRA vendor for compliance with these new requirements. Many vendors are working to update their processes and procedures to comply with the new rules.
- Update the COBRA Election notice to reflect changes.
- Provide timely notification to AEIs and those individuals in the "transition period" describing the recent changes to the law.
- Continue current practices with respect to the subsidy, including seeking credit for the 65% on the Form 941.

We will continue to keep you updated with the latest information as it develops.

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