



## **Special Compliance Alert: New Premium Assistance for Income Eligible COBRA Beneficiaries**

Changes to COBRA regulations were enacted as President Obama signed the American Recovery and Reinvestment Act of 2009 (the "Act") on February 17, 2009.

We ask that you pay special attention to the impact that the Act has on your health plan administration, as the signed version of the Act differs from preliminary versions circulated from the House of Representatives. There are still a number of questions that Plan Sponsors and COBRA Administrators have, and we expect some of these questions to be addressed shortly, but we wanted to provide you with the information we have received to date.

### **To whom does the Act apply?**

The Act will apply to group health plans, including fully insured and self-funded health plans. Unlike with federal COBRA requirements, the Act also applies to state law continuation premiums and PHSA premiums. The special election period discussed below would not apply to employers who are subject to state law and have less than 20 employees. The Act has no impact on COBRA administration for health FSAs (HFSAs).

### **What does the Act do?**

The Act allows certain income eligible individuals to apply for premium assistance to offset the cost of COBRA continuation coverage. In order to qualify, the individual must involuntarily lose their employment (for reasons other than gross misconduct) between September 1, 2008 and December 31, 2009. Involuntary reduction in hours would not qualify the individual for the subsidy. In addition, in order to be eligible for the subsidy without any tax ramifications, an individual's annual income must be less than \$125,000 if single or \$250,000 if filing a joint tax return.

### **Key highlights of the Act are:**

- *COBRA Premium Subsidy.* For any individual that involuntarily loses their employment between September 1, 2008 and December 31, 2009, and otherwise qualifies for COBRA coverage, the individual will only be required to pay 35% of their COBRA premium until the *earliest* of (i) 9 months after the first day of the first month he/she is eligible for COBRA, (ii) the first day he/she is eligible for coverage under any group health plan or Medicare or (iii) the date following expiration of the COBRA period. The remaining 65% of the COBRA premium will be subsidized by the federal government by treating the remaining balance as a credit against the employer's payroll taxes. Plan Sponsors will be responsible for submitting reports detailing the amount of the credit to which they are entitled, as well as an estimate of any future credit they believe they may be entitled to at a later date.
- *Special election period.* The Act would allow those individuals who involuntarily lost their employment on or after September 1, 2008, but who did not elect COBRA, to subsequently elect COBRA during a 60-day election period. The 60-day period is calculated from the date notification is given to the individual about his/her entitlement to this special election period.

However, the Act does not provide that coverage will be reinstated retroactively to the date of the qualifying event and also does not extend the individual's maximum COBRA coverage. For example, if an individual, who involuntarily lost his/her job on September 1, 2008, was initially eligible for 18 months of coverage and initially did not elect COBRA, but after 6 months has decided to take advantage of this special election period, the individual would only be eligible for the remaining 12 months of COBRA coverage and not the full 18 months.

Any employee who elects coverage under this special election period must be allowed to either elect the same COBRA package they would have had at the time their employment terminated or, subject to employer approval, they may elect a different COBRA package provided that package is offered to active employees and the COBRA premium would not exceed the premium elected at the time of termination.

- *Pre-existing condition exclusions may not be imposed.* The Act provides that, for any person who wishes to take advantage of the above-mentioned special 60-day enrollment period, a group health plan may not impose a pre-existing condition exclusion even if there has been a 63-day or more break in coverage from the date of the qualifying event until the date of enactment of the Act.
- *Added notification requirements.* The Act imposes both notification requirements on the employee and employer as follows:

An individual receiving a subsidy must notify the employer in writing when he/she becomes eligible for other group health plan coverage. An individual who does not notify the employer may face a penalty of up to 110% of premium reduction.

- Employers and COBRA Administrators must update their COBRA notices with information regarding the subsidy, as well as provide a notice to any employee who had a qualifying event since September 1, 2008. The notice should contain information about the subsidy and special-election period discussed above. Employers have until April 18, 2009 to send these notices out and employees have 60 more days after receiving the notice to elect coverage. Model Notices are to be issued by the Secretary of Labor no later than March 18, 2009.
- *Regulations.* The Act allows the Secretary of Labor to promulgate regulations or other guidance as needed.

### **When is the Act effective?**

The Act applies to COBRA premiums received on or after March 1, 2009.

### **How does the Act impact me as an employer?**

If you administer COBRA on behalf of your health plan, you will have to update your COBRA forms and other plan materials to reflect the above requirements. In addition, it is recommended that you promptly begin to identify those individuals who **involuntarily** lost employment, including employees terminated for cause (excluding gross misconduct), from September 1, 2008 until now, so that you can send the required notices discussed above. These notices are required to be sent out by April 18, 2009.

We have formed a workgroup to identify all of the steps that must be taken to bring your plan into compliance with this new requirement, if RBMS administers COBRA on behalf of your plan. We will keep you informed of the changes that will be needed and will provide you with updated copies of any forms and materials as they are updated by our company on your behalf.

We understand that this may be time consuming and confusing, and want to assure you that we are fully prepared to assist you and guide you in navigating these recent changes. As stated above, Model Notices are to be issued by the Secretary of Labor no later than March 18, 2009. When we learn these notices have been issued, we will issue a Compliance Alert notifying you and providing you with a link to this information.

**We will continue providing updates as they are released from the applicable federal agencies.**

Please feel free to contact your RBMS representative if you have questions regarding this matter.