



## **COBRA Client Update**

### **American Recovery and Reinvestment Act**

**February 24, 2009**

On February 17, 2009, the President signed the American Recovery and Reinvestment Act. This new law has significant implications for COBRA and for state mandated coverage continuation plans known as mini-COBRA. The effective date of these changes is the first day of the first monthly billing cycle on or after February 17<sup>th</sup>.

**COBRA Subsidy.** The federal government will subsidize 65% of the COBRA premium for “Assistance Eligible Individuals” for a period of up to 9 months. The Individuals must pay 35% of the COBRA premium. Employers with group health plans and/or self insured plans will be reimbursed 65% of the COBRA premium by taking a tax credit on their federal unemployment tax returns.

**Eligibility.** “Assistance Eligible Individuals” (Individuals) are employees (and dependents) who lost (or lose) coverage because of an involuntary termination between September 1, 2008 and December 31, 2009.

**Eligibility – Income Limitation.** The subsidy is phased out for Individuals whose “modified adjusted gross income” is between \$125,000 and \$145,000 for single filers and \$250,000 and \$290,000 for joint filers. Any excess subsidy received by the Individual will be taxed at 100% at the time of the Individual’s income tax filing. These Individuals will be allowed to opt-out of the subsidy program.

**Duration.** Under the Act, eligibility ends on the *earliest* of (a) 9 months, (b) the day the Individual becomes eligible for other group coverage or for Medicare and (c) the end of the original 18 month COBRA eligibility period. Coverage can always be terminated for failure to pay the beneficiary’s 35% premium share. The Individual is responsible for notifying the plan of eligibility for other group coverage or for Medicare. Any subsidy received after eligibility ends will be taxed to the Individual at 110%.

**Notices.** Employers must notify Individuals who are on COBRA of the subsidy and their right to opt-out. Any Individual who has paid the full premium for any monthly billing cycle on or after February 17<sup>th</sup> (or may reasonably be expected to pay such



premium before notification) must also be notified that he/she will receive a refund or a credit (as decided by the Employer) for any subsidized premium.

Employers must notify Individuals who declined COBRA (or who elected COBRA and have since lost COBRA coverage) of the subsidy, their right to enroll/re-enroll and their right to opt-out. These Individuals have a 60 day election period and coverage begins February 17, 2009. However, the 18 month maximum period of coverage reverts to the original date of the loss of coverage.

Notices for these two groups must be provided within 60 days from February 17<sup>th</sup>.

Employees whose employment is involuntarily terminated between February 17, 2008 and December 31, 2009 must receive the new notices in the normal COBRA notification process. The additional information may be included in the regular notification communication or as a separate attachment.

The federal government will create and make available a new model COBRA notice within 30 days of February 17, 2009.

**Open Enrollment.** If the employer offers more than one group medical plan and the other plan(s) costs the same or less than the Individual's current coverage, the employer may, but need not, offer a special Open Enrollment period and allow Individuals to change coverage. If the employer so elects, the employer must provide the Individuals with Open Enrollment packages and provide the Individuals with a 90 day election period.

**Employer Tax Credit.** Employers will be reimbursed by the federal government for the 65% of the COBRA premium that the government is subsidizing. Employers will submit information with their quarterly payroll tax returns to claim credits. Employers will have to attest to the involuntary nature of each termination and provide the amount of the current and the next period's credits, the tax ID numbers of the employee and dependents, the amount of the subsidy and the level of coverage (Ind., Family etc.). Employers may not seek reimbursement until the Individual's 35% premium payment has been received.

**Employer Subsidized Premiums.** The Act contains a provision about plans where the employer already subsidizes the premiums. It appears that such employer subsidized COBRA payments may not be eligible for government reimbursement.



**Mini-COBRA Plans.** The Act provides that the subsidy for state-mandated Mini-COBRA plans (generally plans of employers with fewer than 20 employees) will be paid to the *insurance carrier* that collects the premium when the benefit itself is fully insured. At this time, it is not clear how (or even if) this subsidy will be passed along to the employer. However, many Benemax clients “self-fund” (i.e. “Wrap”) a portion of their benefits, so this provision will not apply to them. Benemax will provide further details on this subject as they become available.

If you have further questions, please contact Walter Hiltz, Benemax Compliance Officer, at 800-528-1530, extension 120.