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FAQ for Employers about COBRA Premium Reduction under ARRA

What is the new COBRA subsidy provision contained in the stimulus package signed by the President?

The stimulus package, which was enacted as the American Recovery and Reinvestment Act of 2009 (ARRA) temporarily reduces the premium for COBRA coverage for eligible individuals. COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) allows certain people to extend employer-provided group health coverage, if they would otherwise lose the coverage due to certain events such as divorce or loss of a job.

Individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA, may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the full COBRA premiums under their plans for up to 9 months. The employer (or other responsible entity) may recover the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under state continuation coverage laws.

If the individual was offered Federal COBRA continuation coverage as a result of an involuntary termination of employment that occurred at any time from September 1, 2008 through February 16, 2009, and that individual declined to take COBRA at that time, or elected COBRA and later discontinued it, he/she may have another opportunity to elect COBRA coverage and pay a reduced premium.

What plans are subject to the premium reduction provisions?

The COBRA premium reduction provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). They also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act, and plans in the Federal Employee Health Benefits Program (FEHBP). The premium reduction is also available for group health insurance that is required by State law to provide comparable continuation coverage (such as "mini-COBRA").

Who is eligible to receive the COBRA premium reduction?

ARRA makes the premium reduction available for "assistance eligible individuals." An Assistance Eligible Individual is a COBRA qualified beneficiary who meets the following requirements: Is eligible for COBRA continuation coverage at any time during the period from September 1, 2008 through December 31, 2009; Elects COBRA coverage (when first offered or during the additional election period provided by ARRA); and the COBRA election opportunity relates to an involuntary termination of employment that occurred at some time from September 1, 2008 through December 31, 2009.

However, if the individual is eligible for other group health coverage (such as through a new employer's plan or a spouse's plan) or Medicare he/she is not eligible for the premium reduction.

If the employee's termination of employment was for gross misconduct, the employee and any dependents generally would not qualify for COBRA or the premium reduction.

Electing the premium reduction disqualifies the individual for the Health Coverage Tax Credit. Additionally, certain high-income individual may have to repay the amount of the premium reduction through an increase in their income taxes. If the amount earned for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), individuals may have to repay all or part of the premium reduction through an increase in their income tax liability for the year. For more information, visit the [IRS web page](#) on ARRA.

Who is eligible for the second election opportunity for COBRA coverage?

Qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA but are no longer enrolled (for example, those who dropped COBRA coverage because they were unable to continue paying the premium) have a new, second election opportunity. Individuals eligible for the extended COBRA election period must receive a notice informing them of this opportunity. This notice must be provided by April 18, 2009 and individuals have 60 days after the notice is provided to elect COBRA. However, this special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009.

Under ARRA, this special election period opportunity is not required to be provided with respect to State continuation coverage that is provided pursuant to State insurance law. A State can take action, however, to provide an additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009 in order for them to request premium assistance based upon involuntary termination occurring during that period. For more information on rights and responsibilities regarding election periods under State law, contact your State insurance commissioner's office or [CMS](#).

Does ARRA impose any new notice requirements?

Yes, plans and issuers are required to notify qualified beneficiaries regarding the premium reduction and other information about their rights under ARRA as follows:

- A general notice to all qualified beneficiaries, whether they are currently enrolled in COBRA coverage or not, who have a qualifying event during the period from September 1, 2008 through December 31, 2009. This notice may be provided separately or with the COBRA election notice following a COBRA qualifying event.
- A notice of the extended COBRA election period to any Assistance Eligible Individual (or any individual

who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect); who had a qualifying event at any time from September 1, 2008 through February 16, 2009; and who either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice must be provided within 60 days following February 17, 2009.

Unless specifically modified by ARRA, the existing COBRA notice manner and timing requirements continue to apply.

Under the State programs, the issuer of the group health plan must provide the notice to qualified beneficiaries with the information on how to apply for the premium reduction. These notices must be provided within the time required by State law.

What information must the notices include?

The notices must include the following information:

- The forms necessary for establishing eligibility for the premium reduction;
- Contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction;
- A description of the second election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so;
- A description of the right to receive the premium reduction and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

Has the DOL developed model notices?

Yes. The Department of Labor has developed [model notices](#) that are available.

Can employees currently enrolled in COBRA continuation coverage switch to a different coverage option offered by the plan?

Yes. Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium reduction, provided that:

- The premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event;
- The different coverage is also offered to active employees; and

- The different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account, or an on-site medical clinic.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to change. Individuals have 90 days to elect to change their coverage after the notice is provided.

If the employee is required to pay only 35% of the premium, how is the employer reimbursed for the remaining 65% of the premium?

The employer (or other responsible entity) may recover the subsidy provided to Assistance Eligible Individuals by taking the subsidy amount as a credit on its IRS Form 941 quarterly employment tax return.

For more information on the Form 941 credit and the tax provisions in ARRA, visit the [IRS web site](#).

Does the premium reduction apply to premiums paid for periods of coverage prior to enactment of the ARRA?

No. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

If a plan receives payment of 100 percent of the premium for coverage for March or April from an individual determined to be eligible for the premium reduction, what does the plan do with the overpayment?

If an individual meets the requirements of an Assistance Eligible Individual and pays 100 percent of the premium in March or April for coverage in those months, the overpayment can be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

If the employer denies the employee's request for the premium reduction does the employee have appeal rights?

Yes. Individuals who are denied treatment as Assistance Eligible Individuals and thus denied eligibility for the premium reduction may request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department of Health and Human Services will handle appeals for Federal, State, and local governmental employees, as well as appeals related to group health insurance coverage provided pursuant to state continuation coverage laws. The Departments must make a determination within 15 business days of receipt of a completed request for review. The Department of Labor is currently developing a process and an official application form that will be required to be completed for appeals. The process will include obtaining information from the employer, plan or insurer where appropriate. There will be a very short

turnaround time for submission of this information due to the short time for the determination.

Where can I go to find more information?

Guidance and other information is available on the Department of Labor's dedicated COBRA web site at www.dol.gov/COBRA. You are encouraged to subscribe to this page so that you will receive updates as new information is added to the site. You can also call (866) 444-3272 to speak to an Employee Benefits Security Administration Benefits Advisor.

For specific information about how you claim credit for the 65% of COBRA premiums and filing your Quarterly Federal Tax Return (Form 941) you should visit the [IRS web site](#). The IRS will continue to update its web site with more information on the ARRA premium assistance provisions as it becomes available. ◇

Does Targeted Patient Rx Education Impact Consumer Behavior?

Conventional wisdom says that informing prescription-drug plan members of lower-cost options, such as generics, would have an impact on moving them to those options. In the past, pharmacy benefit managers have focused on educating members about chemically equivalent generics. Recently, however, two studies on education about new therapeutic alternatives put conventional wisdom to the test through the discipline of Consumerology. Researchers combined proven consumer marketing strategies, with insights learned from behavioral economics, to develop more effective ways to communicate about pharmacy plan benefits.

The patent expirations of Fosamax[®] (alendronate sodium) and Ambien[®] (zolpidem) created two separate opportunities to test the influence of letter-based programs on convincing members to switch from their brand-name drug to a new therapeutic generic alternative. These two patent expirations represented the first generics in these therapy classes.

In the Ambien study, the results were clear. Among patients filling brand hypnotic prescriptions through a retail pharmacy, the odds of members in the group receiving education letters switching to generic zolpidem were 54% greater when compared to the group who did not receive letters. This resulted in an estimated switching increase of 5.3 percentage points for those who received targeted patient education. Results of a letter-based education program were even greater for members filling their prescriptions through Home Delivery. Those members were twice as likely to switch to the generic alternative. The greater success in Home Delivery is consistent with other findings around mail campaigns encouraging use of lower-cost alternatives.

Results of the Fosamax study showed that in retail, members with education were two times more inclined to switch to generic, compared to those receiving no education. However, just as in the Ambien study,

those members filling prescriptions through Home Delivery were almost four times more inclined to switch to a generic when presented with information of its existence. This suggests that, once a relationship is established with plan members through Home Delivery, members are more willing to receive, trust and be influenced by suggestions regarding improving the health and value of their prescription-drug benefit. But, with the switch to generics still relatively low among members filling other branded bisphosphonates at retail pharmacies – according to the study – the work of refining consumer education is not finished.

Source: Express Scripts

Restoring Employee Morale After Layoffs

The uncertainty of layoffs can make the morale at your organization plummet as employees feel sadness for those who have left, while also nervous regarding the fate of their own positions. To boost morale, employees must understand how they can do their jobs with confidence, that they will be rewarded for good performances and that the working environment will not be tense for long. The following tactics will help your employees regain the confidence they once exuded:

- Communicate honestly with employees about why the layoffs were necessary and what the company plans to do to recover.
- Direct managers should listen empathetically to remaining employees and console them, as necessary. They may be experiencing grief over losing a friend and confidant in the office. While talking with employees, avoid placing judgment about the other person's feelings, concerns and attitudes.
- Create and maintain an environment of trust for your employees. Since surviving employees may feel wary about the state of organization, workers need to be reassured that their employer will thrive again.
- Communicate role changes early and effectively for surviving employees. Some may have to learn new skills or pick up additional work to compensate for the employees that were laid off.
- Focus on remaining productive while transitions occur.
- Publicize your Employee Assistance Program (EAP) (if you have one) for employees. Also consider offering onsite counseling to ease the stress of employees who are left lurking in the dust of the layoffs.
- Survey your employees to identify their top concerns and modify your internal communications to address these issues.
- Make your CEO more visible to excite employees to work hard and push through. Assure that this individual has the answers to some of the most

frequently asked questions from employees and has the ability to articulate the reasons for downsizing. This is also a time to reinforce the company's mission, vision and plans for the future.

- Eliminate unnecessary business work that does not contribute to your organization's goals. This may entail re-engineering some of your current processes or changing job descriptions to make clear what really matters for the company's success.
- Provide a company reorganization newsletter or e-mail campaign to provide employees information about the changes.
- Discuss the type of culture and working environment that you want to have at your organization after the layoffs are through. Identify what you will do to move in this direction, including helping surviving employees feel appreciated.
- Provide rewards and recognition for employees when they deserve it.
- Do not cancel expected events, sponsorships and programs that were planned before layoffs occurred. People want to continue to go through their daily lives in a routine fashion. Consider even increasing company events that restore harmony, trust and allegiance.

New I-9 Form Now Required

Beginning April 3, 2009, all employers are required to use the new I-9 form to verify employment eligibility. The new form contains three important changes:

- 1) All documents that are presented for verification must be current.
- 2) Eliminates expired employment authorization documents (Forms I-688, I-688A, and I-688B) from List A.
- 3) Adds two documents to List A: a Temporary I-551 printed notation on a machine-readable immigrant visa; and a passport from the Federated States of Micronesia and the Republic of the Marshall Islands with a valid Form I-94 or I-94A.

To avoid monetary penalties, employers should only accept unexpired documents that are listed on the new Form I-9. If re-verification is required, employers should only accept documents listed on the new I-9.

The new form can be found at <http://www.uscis.gov/portal/site/uscis>.

Please contact your LDP representative for more information on any of these topics.

The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.

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