



COBRA PREMIUM SUBSIDY EXTENDED

DECEMBER 2009

On December 19, 2009 the Senate approved a provision in a military spending bill that would extend previously enacted health insurance continuation coverage premium subsidies.

Readers of our February 16, 2009 and April 6, 2009 Bullard Alerts know that the American Recovery and Reinvestment Act of 2009 (ARRA) provided a subsidy for continuation coverage in certain cases (see <http://www.bullardlaw.com/Resources/BullardAlerts.html>). Under ARRA, qualified beneficiaries who begin continuation coverage after December 31, 2009 are ineligible for the subsidy.

The new bill, which President Obama is expected to sign, does the following three things:

- Extends by two months the window for the 65% federal premium subsidy. Employees whose employment is involuntarily terminated before March 1, 2010 may be eligible for this subsidy.
- Provides up to six more months of subsidized continuation coverage for qualified beneficiaries, extending the potential period of subsidized COBRA premiums from nine months to 15 months.
- Permits certain qualified beneficiaries whose subsidy expired before President

Obama signs the new bill and who did not pay the full continuation coverage premium, the opportunity to pay subsidized premiums retroactively and receive retroactive coverage.

Let's look at each of these provisions in turn, using examples to illustrate:

The first provision, keeping the window open, would mean that an employee, Gus, whose employment is involuntarily terminated on February 28, 2010, could be eligible for subsidized continuation coverage for up to 15 months (if COBRA applies) or 9 months (if only Oregon continuation coverage applies). It doesn't matter that his continuation coverage doesn't start until March 1, 2010.

The second provision, extending the premium subsidy, would mean that a former employee, Hal, whose employment was involuntarily terminated on September 30, 2009, could be eligible for subsidized COBRA coverage until December 31, 2010.

The third provision, providing a retroactive coverage and payment opportunity, would mean that another former employee, Ida, whose employment was involuntarily terminated on February 15, 2009 and whose ARRA subsidy ended on November 30, 2009, and who has not paid her December 2009 COBRA premium, may have an extended



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opportunity to pay that premium, and to receive the subsidy described above. In our example, Ida must pay the retroactive subsidized premium not later than the later of 60 days after the date that President Obama signs the new bill *or* 30 days after the plan administrator notifies her (discussed below), as required, of the retroactive coverage and payment window. If Ida has paid the unsubsidized December 2009 premium already, the plan administrator could either offset Ida's future COBRA premiums or issue her a refund.

As noted above, the new law would require plan administrators to notify current and future qualified beneficiaries of the new 15-month premium subsidy.

- For qualified beneficiaries who are assistance eligible individuals on or after October 31, 2009, or were terminated from employment on or after that date but before President Obama signs the bill, the administrator must provide notice of the premium subsidy extension within 60 days after the date President Obama signs. (For terminations of employment that occur after President Obama signs, the regular notice rules apply, incorporating the revised 15-month subsidy information).
- For assistance eligible individuals who lost COBRA coverage because of a failure to timely pay the unsubsidized premium (after the subsidized premium had expired), the administrator must provide notice of the opportunity for retroactive coverage by paying the subsidized premium. This notice must be provided within 60 days after

expiration of ARRA-provided subsidized coverage (which may be as early as January 29, 2010).

Guidance from the Department of Labor, Internal Revenue Service, and state insurance agencies will likely follow. Unanswered questions include:

- Whether states, including Oregon, will extend the period of state continuation coverage from nine to fifteen months to match the federal period.
- Whether the DOL will issue sample notices.

Employer Action Steps

Employers that sponsor group health plans that cover assistance eligible individuals will want to move quickly to address the continuation-coverage changes made by the new law. We suggest these steps:

- Prepare and circulate notices announcing the premium subsidy extension to individuals who are assistance eligible individuals on or after October 31, 2009, or are terminated from employment on or after that date.
- Identify the qualified beneficiaries eligible for the retroactive subsidy and prepare and circulate a notice offering them retroactive COBRA coverage.
- Determine whether any individuals currently on COBRA coverage are entitled to a reimbursement or set-off as a result of the subsidy extension.



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- Consider how the premium subsidy might facilitate separation agreements or reductions in force through February 28, 2010.

Please feel free to contact Bullard Smith if

you have questions or comments about these news rules, or any matter relating to employer-sponsored benefits.