

## **COBRA Provisions in Economic Stimulus Legislation**

As part of the legislative efforts to provide relief on account of the nation's economic slowdown, Congress is likely to expand the coverage continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") in effort to help individuals who lose access to group health care coverage due to a job loss. Under COBRA, an employee of an employer with 20 or more employees who would lose coverage under the employer's group health plan due to termination of employment may elect to continue that coverage for a period of time (generally 18 months from the date coverage is lost) by paying premiums to the employer to continue such coverage.

Yesterday, the House of Representatives passed an economic stimulus plan that includes an expansion to the COBRA rules. The Senate is considering a separate economic stimulus bill, which also contains COBRA provisions. The COBRA provisions in the legislation that the House passed and that the Senate is currently considering differ, as summarized below.

**Premium Assistance.** A federal subsidy of up to 65% of the COBRA premium will be available to those individuals who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009 and who are responsible for paying at least 65% of the COBRA premium. This is a temporary provision. Under the House bill, the premium assistance payment will be available for 12 months, whereas under the Senate bill, the premium assistance payment will be available for 9 months. The premium assistance payment will be made to the employer or plan sponsor of the group health plan. Under both the House and Senate bills, the employer or plan sponsor will receive the premium assistance payment first by reducing its remittance of payroll taxes to the federal government and if that is not enough, the employer or plan sponsor will receive the premium assistance payment directly from the Treasury Department or the IRS.

**Extension of Coverage Period.** The House bill provides that the COBRA continuation period will be permanently extended for individuals who lose health coverage due to termination of employment (other than by reason of gross misconduct) or reduction of hours of employment and who at the date of their loss of health coverage either are (i) age 55 or older or (ii) have completed 10 years of service (with service calculated under the retirement plan rules). The expanded COBRA period starts with the loss of coverage and generally ends on the earlier of: (i) failure to pay premiums; (ii) obtaining coverage under another group health plan; or (iii) becoming Medicare eligible. This extended period applies not only to the former employee but to the former employee's spouse and dependents. COBRA coverage will also end if the employer terminates all group health plans for all employees.

If the House provision is enacted, the current 18-month COBRA period will no longer apply for these older or long-service employees. This means that a 30-year old employee with 10 years of service could terminate employment and pay for COBRA continuation coverage for over 35 years until he or she is Medicare eligible. There is no similar COBRA extension in the Senate bill.

**New Enrollment Rights.** The Senate bill adds a provision not contained in the House bill that provides once an individual is eligible for a COBRA premium assistance payment subsidy, the individual will be able to change his or her health insurance coverage option under the employer's plan and to elect to enroll in coverage that has the same or lower premiums. Under current law, COBRA beneficiaries are only eligible to elect to continue the coverage that they had immediately before the COBRA qualifying event, although they must generally be given the ability to change options during the employer's open enrollment.

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As for timing of the bill, Speaker Pelosi is still insisting that the House will not leave town for the President's Day recess (set to begin Feb. 14th) without the stimulus bill being completed. The House passed its bill yesterday. The Senate committees with jurisdiction have started their consideration of stimulus legislation this week. After the Senate passes its version of an economic stimulus bill, leaders in the House and Senate will meet in conference to reconcile differences between the two versions of the bill. Once the differences are reconciled in conference, their conference committee report will be passed by the House and Senate and then it will be sent to President Obama for his signature. We are not sure if it all will be wrapped up in the next few weeks given the size of the bill and its controversial provisions, but it clearly is on a fast track.

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We will provide updates on further developments. In the meantime, if you have any questions, please contact your regular Groom attorney or any of the Health and Welfare Practice Group attorneys listed below:

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