

December 22, 2009

Two-Month Extension to COBRA Subsidy Signed into Law on December 19th

The American Recovery and Reinvestment Act of 2009 ("ARRA"), enacted on February 17, 2009, provides a federal subsidy for COBRA premiums for certain employees and covered family members who lost or will lose coverage under a group health plan due to involuntary termination of employment from September 1, 2008 through December 31, 2009. As the December 31st expiration date approached, legislative proposals to extend the COBRA subsidy premium program were introduced in the Senate and the House of Representatives. However, it was an open question whether these proposals would be included in legislation that would be enacted before the end of the year.

That question was answered this past week, when both the House and Senate approved the Department of Defense Appropriations Act for Fiscal Year 2010 (H.R. 3326), which contains a two month extension to the COBRA subsidy premium program. The President signed the bill into law on December 19, 2009. The bill contains the following key provisions, which are effective immediately:

- **Extended Expiration Date.** The COBRA subsidy premium program will be available for a loss of group health coverage due to involuntary termination through February 28, 2010.
- **Extended COBRA Subsidy Period.** The extension increases the subsidy period from 9 months to 15 months.
- **Retroactive COBRA Elections.** Group health plans are required to allow assistance eligible individuals who exhausted the 9 month COBRA subsidy period and dropped COBRA coverage to retroactively elect COBRA coverage for up to an additional 6 months, and receive the subsidy for that time (*i.e.*, pay 35% of the COBRA premium for the retroactive coverage).
- **Rebate for COBRA Premiums.** Group health plans are required to allow assistance eligible individuals who exhausted the 9 month COBRA subsidy period and continued to maintain COBRA coverage (and paid 102% of the premium) to receive a reimbursement payment or credit for 65% of the COBRA premium payments that were paid for up to 6 months following the 9 month COBRA subsidy period.
- **New Notice Requirements.** Group health plans are required to provide notice of the extension of premium assistance to the following individuals:
 - Anyone who is an assistance-eligible individual at any time on or after October 31, 2009, or who experiences a qualifying event consisting of termination of employment on or after that date (notice must be provided on or before February 17, 2010); and

- Anyone who is eligible for a retroactive COBRA election or rebate, as described above (notice must be provided within 60 days after the date individual exhausts the 9 month COBRA subsidy period).
- **Clarification Regarding Timing of Eligibility.** The bill clarifies that an individual's status as "assistance eligible" is based on the date that the individual experiences a qualifying event. This change is intended to correct an issue that arose under ARRA, in which an individual who was involuntarily terminated but did not lose coverage until the last day of the month was not eligible for the COBRA subsidy in the month that it expired (e.g., Under ARRA, December 31, 2009).

We understand that the Department of Labor will issue model notices, possibly within 30 days after enactment (i.e., January 18, 2010) and that the agencies may also issue Q&As to assist group health plans with compliance with these new requirements.

The text of the bill can be found (on page 154) here:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3326enr.txt.pdf

The text of the original COBRA subsidy bill in ARRA can be found (on page 341) here:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.txt.pdf

Separately, the House passed jobs-related legislation (H.R. 2847, the "Jobs for Main Street Act") that may further extend the COBRA subsidy premium program. That legislation would extend the COBRA subsidy period through June 30, 2010, expand the period to 15 months, and provide certain other clarifications and enforcement provisions. The Senate is not expected to consider the House-passed jobs bill until 2010.

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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