

February 18, 2009

Compliance

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INNOVATION IN BENEFITS

ALERT

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» **COBRA UPDATE**

THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

On Tuesday, February 17th, President Obama signed the American Recovery and Reinvestment Act of 2009 bill into law. As part of the Act, premium assistance for COBRA benefits will be made available to eligible individuals and their families.

IN THIS COMMUNICATION

This Trion Compliance Alert provides a summary of this important legislation including:

- The amount of COBRA premium subsidy
- Who is eligible for premium assistance
- Duration of premium assistance
- Notice requirements
- Coverage options
- Enrollment provisions
- Method of employer reimbursement

PREMIUM SUBSIDY

Under the premium subsidy program, the employer will initially subsidize 65% of the premium cost for the assistance eligible individual. The assistance eligible individual is responsible for the remaining 35% of the benefit premium. Upon receipt of payment from the individual, the employer is then able to submit a claim for reimbursement from the federal government by claiming a credit against the employer's federal payroll taxes.

The subsidy applies to periods of COBRA continuation coverage beginning after the enactment of the Act. For employer group health plans using calendar months as the period of coverage the subsidy applies beginning March 1, 2009.

ELIGIBILITY

The term "assistance eligible individual" means any qualified beneficiary who became or becomes eligible for COBRA continuation coverage between September 1, 2008, and December 31, 2009. The

employee's COBRA qualifying event must have been the result of the employee's involuntarily termination of employment.

The Act does include an income limitation and an individual is not eligible to receive the COBRA premium subsidy during a year in which their federal modified adjusted gross income exceeds \$145,000 (or \$290,000 in the case of a taxpayer filing a joint return). The available COBRA subsidy is reduced for years in which gross income exceeds \$125,000 (or \$250,000 for joint returns). These individuals are provided with the opportunity to waive the subsidy in order to avoid the repayment provisions.

DURATION

The premium subsidy is available for nine months from the effective date of COBRA continuation coverage or from the enactment of this Act. The subsidy ends on or after the earlier of:

- the first date the individual is *eligible* for coverage under any other group health coverage which includes medical coverage, coverage under a health flexible spending arrangement, or Medicare, **or**
- the date which is nine months after the first day of the first day of the first month of eligibility for premium assistance, **or**
- the date following the expiration of the maximum period of coverage required under COBRA (i.e. – early termination of COBRA continuation coverage), **or**
- the date following the expiration of the period of continuation coverage allowed under the applicable COBRA continuation coverage provision if the coverage had been elected.

NOTICE REQUIREMENTS

The Act requires employers to notify individuals who become entitled to elect COBRA continuation coverage during the period September 1, 2008, through December 31, 2009, of the availability of the premium subsidy.

The Act does direct the government agencies to develop a model notice within 30 days of the date of enactment. Each additional notification must include:

- the forms necessary for establishing eligibility for premium reduction.
- the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium reduction.
- a description of the extended election period provided for.
- a description of the obligation of the qualified beneficiary to notify the plan providing continuation coverage of eligibility for subsequent coverage under another group health plan or eligibility for benefits under Medicare and the penalty for failure to notify the plan.
- a description, displayed in a prominent manner, of the qualified beneficiary's right to a reduced premium and any conditions or entitlement to the reduced premium.
- a description of the option of the qualified beneficiary to enroll in different coverage if the employers permits such beneficiary to elect to enroll in such different coverage.

Assistance eligible individuals are required to notify the group health plan if eligibility changes during the coverage period. Penalty to the individual for failure to notify the employer of ineligibility is 110% of premium reduction.

DIFFERENT COVERAGE OPTION

The Act does permit an employer to offer the assistance eligible individual the option to elect coverage that is different from the coverage the individual was enrolled in at the time of the qualifying event. This different coverage election is only permitted where the employer allows, the premium for the different coverage does not exceed the premium for coverage the individual was enrolled at the time the qualifying event occurred **and** coverage is available to all active employees of the employer. To elect to enroll in this different coverage the assistance eligible individual has 90 days after the date of notice of the plan enrollment option to elect coverage.

ENROLLMENT PROVISIONS

Those assistance eligible individuals who are currently enrolled in COBRA continuation coverage and who meet the qualifying events for premium assistance automatically become enrolled in the premium assistance plan effective March 1, 2009. If the individual pays the full premium amount for such coverage, provisions need to be established to provide either a credit or refund for the overpayment.

Employees who would be considered assistance eligible may elect COBRA regardless of their previous response to the offer of COBRA. Such individuals may elect the COBRA continuation coverage during the period beginning on the date of enactment of this law and ending 60 days after the date of notification. Notification must be issued within 60 days from the date of the Act. Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period shall be effective with the first period of coverage beginning on or after the date of the enactment of this Act.

For group health plans with pre-existing condition limitation clauses please note that the period beginning on the date of the qualifying event and ending on the effective date of the newly elected COBRA coverage will not be counted as a break in coverage for purposes of the 63 day break in coverage periods.

METHOD OF EMPLOYER REIMBURSEMENT

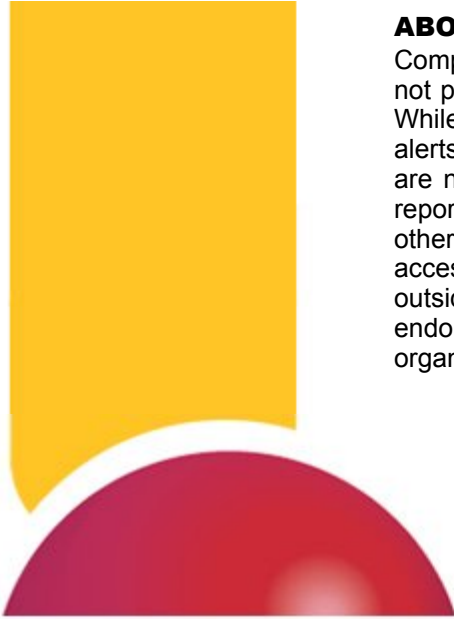
The employer is reimbursed for their 65% premium subsidy through a payroll tax credit which can be reimbursed after the reduced premium has been paid. The Internal Revenue Department is required by the Act to provide further regulations and/or guidance on this issue.

The Act mandates this guidance to include the following reporting requirements:

- attestation of involuntary termination.
- a report of the amount of payroll tax offset by the premium reduction.
- a report containing all the TINs of all covered employees, the amount of their subsidy and a designation as to whether the subsidy is for the individual or for more individuals.

CONCLUSION

Trion is providing you with this update based on available information and interpretation of the Premium Assistance of COBRA Benefits section of the American Recovery and Reinvestment Act. Federal Agencies will begin releasing formal guidance in an effort to further clarify certain sections of the act. These clarifications may alter or change previously given information. Trion will provide updates as additional information becomes available.



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