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COBRA Subsidy Frequently Asked Questions

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Department of Defense Appropriations Act of 2010, the Temporary Extension Act of 2010 and the Continuing Extension Act of 2010, reduces the continuation coverage premium in some cases. The law includes a 65 percent federal premium reduction for COBRA premiums for individuals who were involuntarily terminated from employment.

What does the latest extension change?

The Continuing Extension Act of 2010 includes amendments to the COBRA premium subsidy provisions of the American Recovery and Reinvestment Act of 2009, as previously amended by the Department of Defense Appropriations Act of 2010 and the Temporary Extension Act of 2010. State governments need to take action for this to apply to employers with fewer than 20 employees. As a reminder, ARRA provides a 65 percent COBRA premium subsidy for those who were involuntarily terminated. The Continuing Extension Act of 2010 amends the following items:

- **Eligibility timeframe -** The Extension Act extends the subsidy eligibility period end date from March 31, 2010, to May 31, 2010. Now, in order to be considered eligible for the premium subsidy, a person must have experienced an involuntary termination of employment on or after September 1, 2008, and on or before May 31, 2010.

- **Eligibility expanded -** The Extension Act states that eligibility for the premium subsidy extends to certain individuals who have experienced a reduction in hours as a qualifying event. Prior to the clarification, to be eligible for the premium subsidy, the qualifying event had to be an involuntary termination of employment. Previously, if an employee experienced a reduction in hours that resulted in a loss of coverage, those individuals were not considered assistance eligible individuals and were not eligible for the subsidy if they later experienced an involuntary termination of employment.

  Beginning after March 2, 2010, an individual may be entitled to the premium subsidy if the qualifying event consisted of a reduction in hours during the premium subsidy eligibility period followed by an involuntary termination of employment occurring on or after March 2, 2010. Individuals who experienced a reduction in hours and did not elect COBRA coverage, or elected but then discontinued COBRA coverage prior to the maximum coverage period, will have another opportunity to elect COBRA coverage upon the subsequent involuntary termination of employment occurring on or after March 2, 2010.

  The Extension Act indicates that individuals cannot be required to pay for COBRA coverage for the interim period between the reduction in hours and the involuntary termination of employment.

Example: An employee's hours are reduced from full-time to part-time on December 1, 2009, and, as a result, loses coverage under the employer's medical plan at the end of December. At that time, the employee is not entitled to the COBRA premium subsidy at that time, but decides to elect COBRA coverage. Then, on March 3, 2010, the employee experiences an involuntary termination of employment. The former employee is eligible for the premium subsidy beginning on the date the coverage is ended for up to 15 months, but is usually only available for a total of 18 months of coverage.

If you have any employees in this situation and you have fewer than 20 employees, please contact your billing representative as HealthPartners is required to send a notice to individuals with this type of qualifying event.

In December 2009, the Defense Appropriations Act extended the COBRA subsidy from nine to 15 months. Individuals who were getting the premium subsidy on or after October 31, 2009, became eligible for an additional six months of the premium reduction. This extension also extended the original timeframe for eligibility for the subsidy from December 31, 2009 through February 28, 2010. In addition, under this extension, an individual's eligibility for the subsidy is determined by the date of the involuntary termination rather than the date of COBRA eligibility. Therefore, a member who is involuntarily terminated in February may not be eligible for COBRA until March 1, but they will still be eligible for the subsidy. The newest law extended the original timeframe for eligibility for the subsidy once again, from February 28, 2010 through May 31, 2010.

The 18-month limit for COBRA coverage eligibility does not change.

What is the timeframe for the COBRA subsidy?

The subsidy is available beginning on March 1, 2009 for individuals with an involuntary termination of employment between September 1, 2008 and May 31, 2010.

Does this impact all employers?

We do not believe State governments need to take action for this to apply to employers with fewer than 20 employees, but we continue to await official guidance.

When does the extension go into effect?

This extension goes into effect immediately. Employers and insurers have up to 60 days to comply with the new requirements.

What does this extension mean to HealthPartners?

HealthPartners will continue to administer the subsidy and send notifications to eligible individuals whose coverage is terminated by an employer with fewer than 20 employees. The updated notices are posted on **healthpartners.com/employer**.

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What is the employer's role?

There are different rules for the subsidy depending on the *total* number of employees (not only full-time or benefit-eligible). By law, the subsidy is administered differently depending on whether the company is covered by Federal COBRA law or state continuation law. If your number of employees changes from one year to the next, it is your responsibility to notify HealthPartners.

- **If you have 20 or more employees:**
  - You are most likely covered by Federal COBRA and you will need to administer the subsidy and collect the subsidy reimbursement through a payroll tax credit. More information is available at **www.dol.gov/cobra**.
  - You may allow qualified beneficiaries to change their coverage options through the "buy down" provision (not required). As a rule, the coverage must have the same or lower cost, but during open enrollment current COBRA rules would apply. In this event, individuals have 90 days to enroll.

- **If you have fewer than 20 employees:**
  - You are most likely covered by state continuation law and HealthPartners will cover the 65 percent subsidy and collect the reimbursement from the Federal government.
  - HealthPartners is required by the Department of Labor to send a continuation notice to certain members with a qualifying event from September 1, 2008 to May 31, 2010.
    - In order to comply with this requirement, we have been sending and will continue to send a continuation notice that includes an attestation to all members with terminated coverage from September 1, 2008 to May 31, 2010. A copy of the notice is posted on **healthpartners.com/employer**.
    - We will instruct recipients to return applicable information to you or your COBRA administrator.
    - The attestation must be completed by anyone who would like to apply for the subsidy. If you receive a completed attestation for an eligible individual, please complete the box at the bottom of the second page and mail or fax it to your HealthPartners billing representative. It is important that you let us know if you are paying any portion of the individual's premium as that impacts the amount we collect for reimbursement from the Federal government.
    - HealthPartners will track the 15-month subsidy and notify you one month before it ends. Once the individual's 15 month subsidy ends, we will resume billing 100 percent of the premium.
    - Please continue to send enrollment changes to HealthPartners as you currently do.
  - This process is in addition to your current process and is not a replacement of your COBRA administration. You will continue to be responsible for communicating with eligible individuals about continuation coverage and billing the premiums. As soon as we receive the Group Size Form from the

group and attestation for an eligible individual, we will begin billing the subsidized amount and apply any applicable credits to the individual's premium.

How much will the government subsidize?

For individuals making less than $125,000 per year and couples making less than $250,000 annually, 65 percent of their COBRA premiums will be subsidized by the Federal government.

For individuals making between $125,000 and $145,000, and couples making between $250,000 and $290,000, the subsidy will be reduced. At this time we do not know the reduction amount.

The income limits are based on the individual's modified adjusted gross income for the year(s) in which the subsidy is received.

Who is eligible for the COBRA subsidy?

Individuals who had a COBRA-qualifying involuntary termination from September 1, 2008 through May 31, 2010 are eligible. The subsidy applies to both medical and dental benefits (including voluntary dental plans) for Minnesota and only medical in Wisconsin.

Employees who voluntarily terminated from employment or individuals who did not participate in the employer-sponsored medical and dental plan are not eligible for the subsidy.

What is considered "involuntarily termination" from employment?

ARRA does not define involuntarily termination. The Department of Labor has provided some guidance regarding the definition of "involuntarily." It does not include employees terminated for gross misconduct.

The IRS informally indicated that the following would be considered an involuntary termination:

- employee accepts a voluntary retirement (or layoff) program invitation from the employer
- a furlough or layoff with an indefinite return date
- a "constructive involuntary termination" (e.g. employer moves a division from one city to another and invites employees to move to the new city; those that do not accept the new employment should be considered involuntarily terminated)
- a termination due to a "material negative change in employment" (e.g. employer reduces a person's job to PT from a FT position and employee terminates rather than taking the reduced position)

The IRS also indicated that 1) death and 2) reduction in hours to more than 0 (i.e. employee remains employed) will NOT be considered involuntary termination for purposes of the subsidy.

Do family members qualify for the subsidy?

Yes. Continuation coverage provided to a qualified individual and any dependents (including family members) qualifies for the subsidy. The dependent must, however, qualify for the continuation coverage as specified by COBRA, FEHB or the state continuation coverage requirements.

In some cases, the subsidy will continue if the qualified individual is no longer receiving continuation coverage. For example, if the continuation coverage is provided through COBRA and the qualified individual dies, the surviving spouse and any children will continue to qualify for COBRA coverage and for the subsidy.

How long is the subsidy available?

The COBRA subsidy is available for up to 15 months of COBRA coverage or until individuals are eligible for coverage under another employer's plan or Medicare. The standard COBRA window of 18 months does not change.

What happens if an employer's size varies from more than to less than 20 employees?

A plan is not subject to COBRA for any calendar year if all employers maintaining the plan employed fewer than 20 employees on a typical business day during the preceding calendar year. An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if it had fewer than 20 employees on at least 50 percent of its typical business days during that year. If a single employer plan ceases to be a small employer plan because of an increase in its workforce during the calendar year, then the plan becomes subject to COBRA as of the following January 1. It is your responsibility to notify HealthPartners if your number of employees changes.

What is the subsidy amount?

The subsidy is 65 percent of the COBRA premium. If you are already subsidizing part of the individual's premium, the Federal subsidy only applies to 65 percent of the individual's portion of the premium.

Example 1:

- 102 percent of the active employee premium is $1,000
- Employer charges $1,000 to purchase COBRA
- 35 percent of $1,000 is $350 - the individual is required to pay $350
- The employer will pay $650 (65 percent) and then be reimbursed via a payroll tax credit

Example 2:

- 102 percent of the active employee premium is $1,000
- Employer charges $200 to purchase COBRA
- 35 percent of $200 is $70 - the individual is required to pay $70
- The employer will pay and be reimbursed via a payroll tax credit for $130 (65 percent)

Example 3:

- 102 percent of the active employee premium is $1,000
- For the first 3 months, employer charges $200 to purchase COBRA, and charges $1,000 per month thereafter
    - For the first 3 months:
        - The individual is required to pay $70 (35 percent of $200)
        - The employer will pay and earn a credit of $130 (65 percent)
    - For the next 6 months:
        - The individual is required to pay $350 (35 percent of $1,000)
        - The employer will pay and earn a credit of $650 (65 percent)

Who needs to be notified of the subsidy?

The subsidy must be communicated to individuals with a COBRA-qualifying event between September 1, 2008 and May 31, 2010. COBRA notices must be revised to contain additional information about the subsidy and the subsidy extension. The Department of Labor provides model language and a sample attestation at **www.dol.gov/cobra**.

Violation of the notice requirements is considered a violation of the current COBRA notice requirements and subject to the same COBRA penalties**.**

Eligible individuals who are denied a subsidy may submit an appeal to the Department of Labor, which will be reviewed within 15 days. A process and an official application form will be posted on the Department of Labor's website.

When is an individual no longer eligible for the subsidy?

The subsidy is available for 15 months. An individual ceases to be eligible for the subsidy on the date the individual becomes <u>eligible</u> for other health plan coverage. The normal COBRA rule is that an individual loses eligibility after <u>enrolling</u> in another health plan. The individual is responsible for notifying the employer or plan. The Department of Labor will provide procedures and individuals will be charged a penalty if they do not comply.

What if an employer refuses to provide group continuation coverage or to provide the subsidy?

The law requires the federal Department of Labor to provide an expedited review of any employer's refusal to allow a worker to elect group continuation coverage and receive the subsidy.

Once the denied individual submits an application for review, the Department of Labor shall make an eligibility determination within 15 business days. If you have additional questions about these reviews, contact the Department of Labor at 1-866-444-3272 or visit the agency's website at http://www.dol.gov/ebsa/COBRA.html.

What if a group terminated coverage?

HealthPartners will administer the subsidy for groups who are current HealthPartners health plan groups with less than 20 employees. If a group with less than 20 employees terminated HealthPartners coverage prior to March 1, 2009, the new insurer should administer the COBRA subsidy.

For additional information, please visit:

IRS

- General information: http://www.irs.gov/newsroom/article/0,,id=204505,00.html
- FAQs: http://www.irs.gov/newsroom/article/0,,id=204708,00.html
- Updated payroll tax form: http://www.irs.gov/pub/irs-pdf/f941.pdf

Department of Labor

- General information: http://www.dol.gov/ebsa/COBRA.html
- Model notice and attestation: http://www.dol.gov/cobra