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June 2009 PIA Update – COBRA

INTRODUCTION:

The Stimulus Package that passed earlier this year (2009) made changes to the federal COBRA statute. PIA National alerted members to these changes through PIA Newslines. However, we've received more inquiries as further federal and state health care/benefit reforms move forward and are now distributing the most updated information related to the changes so that everyone will be fully informed. The article below summarizes the COBRA issue for further consideration by PIA member agency owners.

For any business that offers a group health plan to its employees, it is important to understand if the requirements and exceptions of COBRA apply to your agency. In the event that they do, the business needs to be clear on how those requirements and exceptions apply. PIA agencies should also appreciate that COBRA and other related requirements affecting employee-benefit programs, change from time-to-time. Just as you do for your insurance customers, this periodic "insurance compliance review" helps PIA agencies avoid penalties for failing to comply as well as maximizing any tax rebates from the federal government. This article outlines some key points of COBRA, especially the new ARRA mandated changes to the program.

In the wake of establishing federal COBRA guidelines, many states followed suit and created "state versions" of COBRA that create and impose federal COBRA-like requirements to their state's larger pool of employers that are not otherwise directly obligated under the federal COBRA statute. In addition to coordinating with federal COBRA requirements, these state laws also coordinate with state small group/small-employer requirements. Accordingly, when federal COBRA changes occur, it is common and often necessary for states to follow with changes to their state COBRA and small-employer group health benefit requirements in order to maintain coordination.

Therefore, all employers offering a group health plan to its employees should reference both federal COBRA, as well as the various state COBRA, group employee health plan requirements that apply to the nature and jurisdictions of their operations.

COBRA

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers to extend employees' health insurance coverage (and the health coverage of employees' covered spouses and dependents) in certain instances where an employee might otherwise lose coverage. An employer is



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not required to pay the cost of this “continuation coverage,” but COBRA does impose certain obligations that must be met.

Under COBRA, an employer is required to offer a “qualified beneficiary” who experiences a “qualifying event” the opportunity to continue health insurance coverage for up to 18, 29 or 36 months. The length of the extension depends on the type of event resulting in a loss of coverage and certain subsequent events that may occur. Generally, a qualified beneficiary is a person who is covered by an employer’s health plan on the day before the qualifying event. Qualifying events are those that cause an employee or the employee’s spouse or dependent to lose coverage under the plan, such as;

- termination of employment or reduction in hours;
- divorce or legal separation;
- death;
- enrollment in Medicare;
- loss of dependent status under the plan; and
- for retired employees, filing of bankruptcy by the employer.

Continuation coverage must be the same coverage the qualified beneficiary had on the day before the qualifying event. An employer can, however, require the qualified beneficiary to pay the entire cost of any premiums. An employer also may, and usually does, require the qualified beneficiary to pay an additional 2% administrative fee. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees since the employer usually pays a part of the premium for active employees, while COBRA participants generally pay the entire premium themselves. COBRA coverage is ordinarily less expensive than individual health coverage.

ARRA Changes to COBRA

The American Recovery and Reinvestment Act (**ARRA**) was signed into law on February 1, 2009. Among numerous other changes and new programs, the act mandated changes to COBRA continuation coverage. **Specifically, the act reduced the premiums for eligible individuals, created a special election opportunity for those employees who did not elect COBRA, allowed for participants to switch coverage options, and established income limits for the premium reduction.**

Premium Reduction

The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals".

An "assistance eligible individual" is the employee or a member of his/her family who:



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- is eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009;
- elects COBRA coverage; and
- is eligible for COBRA as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. The premium reduction does not apply to premiums paid for periods of coverage prior to enactment of the ARRA.

ARRA treats assistance eligible individuals who pay 35% of their COBRA premium as having paid the full amount. Since the employee is required to pay only 35% of the premium, the employer may be reimbursed for the remaining 65% of the premium by the government. The employer may recover the subsidy provided to Assistance Eligible Individuals by taking the subsidy amount as a credit on its IRS Form 941 quarterly employment tax return. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess. Links to information about IRS form 941 are provided below.

If an individual meets the requirements of an Assistance Eligible Individual and pays 100 percent of the premium in March or April for coverage in those months, the overpayment can be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

Switching Benefit Options

Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium reduction, provided that:

- the premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event;
- the different coverage is also offered to active employees; and
- the different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account, or an on-site medical clinic.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to change. Individuals have 90 days to elect to change their coverage after the notice is provided.

Notice requirements under the ARRA



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Employers with 20 or more employees are usually required by federal law to offer COBRA coverage and to notify their employees of the availability of such coverage. The ARRA imposed new notice requirements and mandated that plans notify certain current and former participants and beneficiaries about the premium reduction.

The notices must include the following information:

- the forms necessary for establishing eligibility for the premium reduction;
- contact information for the plan administrator or other person maintaining relevant information in connection with the premium reduction;
- a description of the second election period (if applicable to the individual);
- a description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan or Medicare and the penalty for failing to do so;
- a description of the right to receive the premium reduction and the conditions for entitlement; and
- if offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

The Department created model notices to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy ARRA's notice provisions. DOL model notices <http://www.dol.gov/ebsa/COBRAmode notice.html>. Three model notices are provided, the full version, abbreviated, and an alternative notice.

Plans subject to the Federal COBRA provisions must send the full version of the General Notice to individuals meeting all of the following criteria:

- qualified beneficiaries (not just covered employees);
- who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009 (regardless of the type of qualifying event); and
- who either:
 - have not yet been provided an election notice; or
 - were provided an election notice on or after February 17, 2009 that did not include the additional information required by ARRA.

The abbreviated version of the general notice, which includes the same information as the full version regarding the availability of the premium reduction and other rights under ARRA, but does not include the COBRA coverage election information, may be sent in lieu of the full version to individuals who meet all of the following criteria:



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- have experienced a qualifying event on or after September 1, 2008;
- have already elected COBRA coverage; and
- currently have COBRA coverage.

State Specific Mini-Cobra Laws

As many businesses already know, states often supplement federal COBRA laws with their own mini-cobra laws. These state laws are designed to correspond with the large federal counterpart, but extend coverage in some manner. Most commonly states extend COBRA benefits to employees of a business of less than 20 employees. For instance, Pennsylvania's mini-COBRA laws apply to those businesses with more than 2, but less than 20, employees. The coverage stops at 20 employees in order to avoid conflicting with the federal law.

Recently State legislatures have been adapting their mini-COBRA laws to incorporate the premium reductions mandated in the ARRA. Despite major similarities, there are important differences between state and federal laws. In the case of Pennsylvania, coverage must only be extended for 9 months, as opposed to the federal law requiring 18. Also, in the case of Pennsylvania the law, beneficiaries can be charged a premium up to 105% of the group rate; federal COBRA beneficiaries can be charged a premium of up to 102% of the group rate. Because of these differences it is important to check with state resources to determine any important points.

States may impose separate continuation coverage requirements on health insurance issuers. Health insurance issuers that provide group health insurance coverage comparable to COBRA, under state mini-COBRA laws, should send the Alternative Notice (referenced in the link above) to individuals. Continuation coverage requirements vary among States. Therefore, issuers should conform these notices to applicable State law.

Penalties

Employers that fail to comply with COBRA's requirements are subject to an excise tax of \$100 per day for each qualified beneficiary who is affected by the employer's failure to comply. In addition, plan administrators who do not comply with COBRA's notice requirements are subject to a fine of \$110 per day for each qualified beneficiary who is not notified. Also, a group health plan can be sued for COBRA violations, and in the past courts have awarded attorney's fees in connection with these suits.

Links for Reference

1. Cobra continuation under the ARRA <http://www.dol.gov/ebsa/COBRA.html>



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2. Questions on how to administer the COBRA continuation premium subsidy to former employees, including form preparation, reporting, documentation, taxability, and recapture. <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.
3. Updated 941 form for premium assistance repayments. <http://www.irs.gov/pub/irs-pdf/f941.pdf>
4. Instructions for form 941. <http://www.irs.gov/pub/irs-pdf/i941.pdf>
5. Additional information may be found in [Notice 2009-27](#), Premium Assistance for COBRA Benefits