

LAKE-SUMTER MEDICAL SOCIETY HEALTH PLAN

FEDERAL COBRA LAW

Dear Office Manager/Physician:

The following are the most recent rules that determine if an employer is subject to the **FEDERAL COBRA** Law. If this applies to you now or in the future, please notify us in writing at:

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Ocala, Florida 34478-0270**

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352-622-1050 Fax
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FEDERAL COBRA LAW

The Law: This law requires covered employers (20 or more employees) offering group health plans to provide employees and certain family members the opportunity to continue health coverage under the group health plan in a number of instances when coverage would otherwise have lapsed.

An employer must comply with the Federal COBRA Law if it had twenty (**20**) or more employees on 50 percent or more of its typical business days in the previous calendar year.

Non-employee owners, officers, directors, agents, and independent contractors are excluded.

Both full and part-time employees are counted to determine if you are subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

Multiple Employer Plans*. A multiple employer plan such as a MEWA or a plan through an Association) is different than a multi-employer plan. **In a multiple employer plan each employer is looked at individually to determine if it has to comply with COBRA.**

Multiple Employer Plan
<ul style="list-style-type: none">• More Than One Employer Participates• No Collective Bargaining Agreements• i.e., Chamber of Commerce, Trade Associations

* COBRA Compliance Systems, Inc. (COBRA Alert Reference Manual)

The American Recovery and Reinvestment Act of 2009



Ceridian Summary of COBRA Premium Subsidy



How Does the Act Affect COBRA?

Generally, the Act approved by Congress and signed into law by the President on February 17, 2009 is an economic stimulus package that includes an expansion of COBRA by providing COBRA assistance for certain unemployed individuals and their families with adjusted gross income below a maximum threshold. The Act imposes a number of requirements on employers, plan administrators, and insurers and also applies to any state-mandated continuation coverage. Briefly, it requires employers (or plan sponsors or insurers of certain insured plans) to provide a COBRA subsidy to an assistance-eligible individual. The subsidy is offset by a tax credit against the employer's wage withholdings and FICA payroll taxes. If the employer's subsidy payments exceed the amount of wage withholdings or FICA payroll taxes, Treasury will reimburse the employer directly for the excess amount. The payroll tax credit can not be taken by the employer or other named entity until the unsubsidized payment is received.

COBRA Premium Subsidy

The Act provides a 65% federal subsidy of COBRA premiums for eligible individuals for a maximum of nine months. The subsidy period does not extend the period of COBRA coverage that would otherwise apply to that qualified beneficiary from the original qualifying event date. The subsidy is calculated based on the COBRA premium that the eligible individual otherwise would have been required to pay. If an employer already provides a subsidy (e.g. under a severance plan) the employee would only need to pay 35% of the portion of the premium not paid by the employer (i.e. the employee contribution) and the employer may only apply a payroll tax credit against the 65% portion not already paid by the employer voluntarily (i.e., the employee contribution).

Eligibility for the subsidy ends when such individual becomes eligible for medical coverage under another group health plan or becomes eligible for benefits under Medicare. A qualified beneficiary's failure to notify the group health plan of the cessation of eligibility for the subsidy may subject the qualified beneficiary to a penalty of 110% of the amount of the subsidy. No penalty shall be imposed if it is shown that such failure is due to reasonable cause and not willful neglect occurring after the date of enactment. Coverage under a health flexible spending account (FSA) is not eligible for the subsidy, although a health reimbursement (HRA) generally is covered by the new law.

Individuals with an adjusted gross income exceeding \$145,000 (for single filers) or \$290,000 (for joint filers) are not eligible for the subsidy and the subsidy is phased out for income above \$125,000 (for single filers) or \$250,000 (for joint filers). Qualified beneficiaries that receive subsidies during a plan year in which they exceed these income limits must repay the subsidy by adding it to their tax liability on their individual income tax return. Individuals who do not want to receive the subsidy may decide to permanently waive it.

Qualifying Event

A qualified beneficiary is eligible for the COBRA subsidy if he or she is involuntarily terminated from employment on or after September 1, 2008 through December 31, 2009, including a dependent that makes an independent election of the involuntary termination qualifying event. The Act does not define "involuntary termination;" however, guidance is expected from the DOL within 30 days of enactment. Those qualified beneficiaries who elected COBRA after an involuntary termination prior to the enactment date and who meet the eligibility requirements may receive the subsidy following the date of enactment, but there is no retroactivity of premiums prior to the date of enactment.

Special Election Period

A notice must be provided within 60 days of enactment to all individuals who terminated employment during the applicable time period (not just to individuals who were terminated involuntarily) according to the Congressional Joint Explanatory Conference Agreement. The Conference Agreement clarifies that the special 60-day election period, begins on the date of enactment and ends 60 days after the notice of the special election period **is provided** to the qualified beneficiary who is eligible for a reduced premium and who has not elected COBRA as of the date of enactment. The coverage elected under this special election right begins with the first period of coverage beginning on or after the date of enactment and is not retroactive to the original date that benefits terminated under the plan. Any resulting gap in coverage beginning with the qualifying event and ending on the effective date of the COBRA subsidized period will not be counted as a break in coverage for the purposes of the 63-day rule under HIPAA's portability rules. This special election period opportunity also is extended to a qualified beneficiary who elected COBRA coverage but who is no longer enrolled on the date of enactment. For example, a qualified beneficiary who was terminated from COBRA coverage because he or she was unable to continue paying the premium would be extended the special election period. The conference agreement also clarifies that a violation of the new notice requirements is also a violation of the notice requirements of COBRA.

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Additional Notice Obligations

The U.S. Department of Labor, in conjunction with the Departments of Treasury and Health and Human Services, will provide guidance and model notices within 30 days of enactment, and these notices must continue to be provided for the duration of the subsidy period. For COBRA continuants that have elected as of the date of enactment and whose qualifying event falls within the dates referred to above, a notice shall be provided within 60 days of the enactment describing the availability of the subsidy and the method of establishing eligibility.

Plan Enrollment Option

While not obligated to do so, employers or plan sponsors may provide qualified beneficiaries who are eligible for the COBRA premium subsidy the opportunity to change medical plans. Under this option, the qualified beneficiary can change from the medical plan provided at the time of the qualifying event to any health plan medical option that has the same or a lower premium as the individual's previous coverage offered by his or her employer or plan sponsor to active employees. The qualified beneficiary must elect such alternative coverage within 90 days of the date of when the notice of the option is provided.

Reimbursements

If the full COBRA payment is received during the 60-day period beginning on the first of the month after the date of enactment and the qualified beneficiary is determined to be eligible for the subsidy, the entity to which such payment is made (such as the employer, plan sponsor, or insurer of an insured plan) shall reimburse the amount in excess of 35% or provide a credit against future payments unless the credit will not be used within 180 days from the original receipt of payment date. Reimbursements will be made within 60 days of payment of the full premium. If it is determined later that the credit will not be used within the 180-day period, reimbursement will be made within 60 days of that date.

What Actions Are Necessary for Employers or Plan Administrators As Clients of Ceridian Benefits Services, Inc.?

1. Identify eligible individuals who were involuntarily terminated on or after September 1, 2008.
2. Update COBRA notices and related materials to include information about the subsidy and eligibility requirements. Guidance and Model Notices should be available from the U.S. Department of Labor within 30 days of enactment.
3. Notify individuals within 60 days of February 17, 2009 of their new election period and include the forms necessary to determine eligibility for the subsidy.
4. Develop procedures for handling the subsidy paid by the eligible individual and coordinate with payroll systems the method of claiming the remaining 65% as a payroll tax credit, and then a method for changing the premium back to 100% when the subsidy ends.
5. Develop a method of handling reimbursements of overpayments.
6. Determine whether to apply the "Plan Enrollment Option" referred to above.
7. Understand how the COBRA claims experience and administrative costs may be impacted by this new Law.

Trade Adjustment Assistance Act (TAA) /Health Coverage Tax Credit (HCTC) Program

A qualified beneficiary eligible for premium subsidy can not also be an eligible individual during the same period under the HCTC program which was created by the TAA.

ARRA of 2009 also provides provisions that increase the amount of the HCTC subsidy to 80% of the taxpayer's premiums for qualified health insurance effective for the months beginning on or after the first day of the first month beginning 60 days after the date of enactment until December 31, 2010. The maximum required COBRA continuation coverage period is modified with respect to certain individuals whose qualifying event is termination of employment or a reduction in hours. Where a TAA individual is still eligible as of the date the maximum coverage period would otherwise terminate on or after the date of enactment, the maximum coverage period must be extended during the period the individual is a TAA-eligible individual, but not beyond December 31, 2010.

** Ceridian Corporation provides periodic and selected compliance updates that may have relevance to many of our customers. Ceridian provides this information to customers and friends for general information purposes only. This information should not be construed as legal, tax or other advice specific to any individual or organization. Please consult your appropriate adviser for such specific advice.*