

# HR & BENEFITS ALERT

MARCH 3, 2009

Get All The Latest  
At

March 11, 2009  
Health Plan Update  
Teleconference

## STIMULUS BILL COBRA HIGHLIGHTS

- ✓ **COBRA Rule Changes Effective February 17, 2009**
- ✓ **Plan Amendments, Updated COBRA Notices & Plan Rules Required**
- ✓ **COBRA Premium Reduction/Invoice Changes Required For Some COBRA Enrollees As Early As March 1, 2009**
- ✓ **Special Notifications To Affected COBRA Beneficiaries and Other Newly COBRA Eligible Employees Required**
- ✓ **Some Qualified Beneficiaries Get 2nd Chance To Elect COBRA**
- ✓ **Delay Providing Special Notification Extends 2nd Election Period For Assistance Eligible Individuals**
- ✓ **Assistance Eligible Individuals May Get 90 Days To Elect Cheaper Plan Option**
- ✓ **Consider Need For Other Group Health Plan Updates In Light of Other Recent Law Changes**

## New IRS & DOL Guidance On Stimulus Bill COBRA Relief Includes Info For Employers On Claiming Payroll Tax Credit

The Internal Revenue Service (“IRS”) and Department of Labor (“DOL”) have posted limited initial guidance about temporary requirements added to the group health plan medical coverage continuation requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) by the American Recovery and Reinvestment Act of 2009 (“Stimulus Bill”). The IRS guidance provides preliminary information about what employers must do to claim the COBRA premium subsidy payroll tax credit to help offset the cost of providing required COBRA premium discounts for certain involuntarily terminated former employees and their dependents. Most employers were required to begin granting these COBRA premium discounts beginning March 1. Employers must amend their plans to comply with these mandates and, if they wish to seek reimbursement for COBRA Subsidies, must comply with IRS requirements. Meanwhile, group health plan administrators and insurers must take immediate action to provide required notifications and implement other administrative changes necessary to comply with the new rules.

You can learn more about the Stimulus Bill COBRA Amendments and other changes to group health plan requirements by participating in the March 11, 2009 Health Plan Update Teleconference. Register and get other updates at [CynthiaStamer.com](http://CynthiaStamer.com).

### Stimulus Bill COBRA Highlights

The Stimulus Bill provisions that took effect on February 17, 2009 require special COBRA treatment for “assistance eligible individuals.” See “[Stimulus Bill COBRA Amendments Require Immediate Group Health Plan Action](#)” for more information.

The Stimulus Bill definition of “assistance eligible individual” generally includes any COBRA “qualified beneficiary” who meets all of the following requirements:

- ✓ Is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009;
- ✓ Elects COBRA coverage (when first offered or during the additional election period); and
- ✓ Has a qualifying event for COBRA coverage that is the employee’s involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

This definitions includes both involuntarily terminated employees and their dependents who lost coverage under a group health plan due to the involuntary termination. Presently, no additional guidance exists regarding this definition.

As part of their COBRA amendments, the Stimulus Bill limits the COBRA premium that a COBRA-covered group health plan can charge an “assistance eligible individual” to 35% of the otherwise applicable COBRA premium for a period of up to 9 months (the “Subsidy Period”) beginning March 1, 2009. Employers sponsoring these group health plans must pay the remaining 65% of the COBRA premium (the “COBRA Subsidy”) for the assistance eligible individual during the Subsidy Period. However, the Stimulus Bill allows an employer to seek reimbursement by claiming a payroll tax credit for these COBRA Subsidy payments by complying with applicable IRS procedures.

COBRA coverage when previously offered or who allowed COBRA coverage to lapse after electing that coverage be offered a second COBRA enrollment period in which to elect prospectively to enroll in COBRA coverage. It also requires that group health plans that offer employees different plan options allow assistance eligible individuals the option to change their coverage choice. Also Group health plan administrators must provide certain notifications to assistance eligible individuals concerning these changes.

## MARCH 11 HEALTH PLAN UPDATE TELECONFERENCE

*Employers and plan sponsors, plan administrators and other fiduciaries, and others interested in learning more about the Stimulus Bill amendments to COBRA and other recent changes to federal Health Plan mandates are invited to participate in the "2009 Health Plan Update Teleconference" on March 11, 2009 from noon to 2:00 p.m. Central Daylight Time. The cost is \$75 per registrant.*



Register at  
[CynthiaStamer.com](http://CynthiaStamer.com)

### IRS Guidance For Employers About Claiming Premium Subsidy Payroll Tax Credit

The new IRS **Stimulus Bill COBRA Relief information** unveiled on the IRS.gov website includes an extensive set of questions and answers for employers. It indicates that the IRS will require employers to file a revised Form 941, Employer's Quarterly Federal Tax Return and to maintain certain supporting documentation to claim the payroll tax credit. The required supporting documentation will include:

- √ Documentation of receipt of the employee's 35 % share of the premium;
- √ In the case of insured plans, a copy of an invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier; and
- √ Declaration of the former employee's involuntary termination.

The materials posted by the IRS on its website include a revised version of Form 941 that employers must use to claim the payroll credit beginning with the first quarter of 2009. The IRS has announced that it also will send a copy of the revised Form 941 to about 2 million employers in mid-March.

### DOL Fact Sheet & Other Materials

Concurrent with the IRS posting of guidance, the Department of Labor Employee Benefits Security Administration on February 26, 2009 posted on its website a **COBRA Premium Summary Fact Sheet** summarizing the Stimulus Bill COBRA requirements along with a flyer for employers, a flyer for employees and two downloadable job loss posters announcing the COBRA Stimulus Bill requirements. The DOL did not post the model notice for employers to use to notify assistance eligible individuals of the Stimulus Bill rules but is required to by March 19, 2009. However, DOL officials in response to inquiries have reported it has completed an initial draft that it expects to finalize soon.

The Summary Fact Sheet contains a few clarifications in addition to its basic summary of the Stimulus Bill COBRA Subsidy provisions. These include the following:

- √ The COBRA Subsidy starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis and ends upon ending of eligibility for other group coverage (or Medicare); after the Subsidy Period; or when the maximum period of COBRA coverage ends, whichever occurs first.
- √ The second COBRA election period for assistance eligible individuals applies both to those who did not elect COBRA when it was first offered and those who did elect COBRA but are no longer enrolled (for example because they were unable to continue paying the premium). Both have a new election opportunity.

(continued on page 3)

- √ The Special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that are subject to State Law.
- √ Plan administrators must provide notice about the COBRA Subsidy to individuals who have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009. Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from September 1, 2008 through December 31, 2009.
- √ Individuals eligible for the special COBRA election period also must receive a notice informing them of this opportunity. This notice must be provided within 60 days following February 17, 2009.
- √ Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the COBRA Subsidy (whether by their plan, employer or insurer) may request an expedited review of the denial by the DOL to be completed within 15 business days of receipt of a completed request for review. The DOL is currently developing a process and an official application form that will be required for appeals.
- √ If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the COBRA Subsidy, the different coverage must have the same or a lower premium than the individual's original coverage. The different coverage can not provide only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.
- √ If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the COBRA Subsidy received during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the COBRA Subsidy that must be repaid is reduced proportionately. Individuals may permanently waive the right to COBRA Subsidy but may not later obtain the COBRA Subsidy if their adjusted gross incomes end up below the limits.

The COBRA amendments in the Stimulus Bill are the latest list in a series of new laws and regulations requiring changes in health plan rules, notices, administrative forms and practices. Some of these include new requirements to grant certain military related medical leaves under the Family and Medical Leave Act ("FMLA") and recently effective final FMLA regulations; new premium subsidy and other federal laws affecting the eligibility and enrollment rights of certain individuals to be covered by qualifying State unemployment, Medicaid or the Children's Health Insurance Program (CHIP) premium subsidy programs; changes to nondiscrimination rules enacted under the Genetic Information Nondiscrimination Act of 2008; amendments to the Americans With Disabilities Act; and expanded mental health parity mandates.

Most employers and other group health plan sponsors, their insurers, fiduciaries and administrators will want to review and update their group health plan documents, summary plan descriptions, policies, forms, notices and practices to respond to these and other recent changes to federal health plan rules. You can learn more about the Stimulus Bill COBRA Amendments and other changes to group health plan requirements by participating in the March 11, 2009 Health Plan Update Teleconference. Register and get other updates at [CynthiaStamer.com](http://CynthiaStamer.com).

√ **Need help preparing required plan amendments, notices or communications or complying with these or other health plan rules or have questions about these matters? Call Cynthia Marcotte Stamer at 972.419.7188.**

√ **To learn more about the Cynthia Marcotte Stamer click [here](#).**

√ **For important information concerning this communication click [here](#).**

√ **To update your contact information for these communications, please click [here](#).**

√ **You can [read updates](#) and [register](#) to receive future updates on these and other legal developments affecting health plans [CynthiaStamer.com](http://CynthiaStamer.com).**

[Register Now](#)

## 2009 Health Plan Update Teleconference

March 11, 2009

1:00 p.m. Eastern ~ Noon Central ~ 10:00 a.m. Pacific

### Catch Up On Latest About:

- HIPAA Special Enrollment Rules Including Recent Amendments
- New COBRA Mandates
- FMLA Leave Mandates Including Military Leave Related Requirements
- USERRA Military Leave Mandates
- HIPAA, GINA, ADA & Other Nondiscrimination Requirements
- 125 Plan Implications
- New Rules Allowing States to Provide Premium Subsidies For Medicaid, CHIP & Unemployment Compensation Recipients To Participate In Employer Plans
- Question & Answers Session
- Information About Health Care Eligibility Toolkit Form Set
- More

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#### PAYMENT INFORMATION

*I acknowledge and agree that the participation of any registrant named in this registration is conditional upon the receipt of Cynthia Marcotte Stamer, P.C. of the applicable registration fee for each registrant of \$75.00. I hereby make payment as follows:*

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**REGISTRATION POLICY:** Payment by check or money order and completed registration form must be received at least 48 hours in advance of the program to complete registration. Returned checks shall not constitute payment and shall be subject to a \$50.00 administrative charge. Persons not registered at least 48 hours in advance will only participate subject to space availability. **CANCELLATION POLICY:** In order to receive credit, cancellation (either fax or mail) must be received at least 48 hours in advance of the meeting. Refunds will be made by check via first class mail postmarked within 60 days of receipt of written cancellation notice. **DISABILITIES ACCOMMODATION:** If you are an individual with a disability who requires accommodation to participate, please let us know at the time of your registration. **PROFESSIONAL CERTIFICATION OR CONTINUING EDUCATION CREDIT:** Upon request, participants will receive a certificate of participation documenting their participation in the program for use in demonstrating participation for