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Happy Holidays from SBA!

COBRA Subsidy Likely to be Extended

Currently, employees who were involuntarily terminated from September 1, 2008 - December 31, 2009 are eligible for a federal premium subsidy for COBRA or other similar state-mandated continuation coverage. The subsidy is 65% of monthly premium for a period of up to 9 months.

There is a bill pending that will extend both the eligibility for and the duration of the federal COBRA subsidy (Section 1010 of the Department of Defense Appropriations Act, 2010.) The bill has been passed by the House, and is expected to be approved by the Senate next week. The bill includes the following elements:

- Does NOT change the definition of "assistance eligible individual"
- Does NOT change the amount of the subsidy (i.e., the subsidy is still 65%)
- Does NOT change the manner in which the COBRA subsidy is paid (i.e., as a payroll tax credit)
- Extends the eligibility period of the COBRA subsidy from December 31, 2009 through February 28, 2010 (i.e., COBRA eligibility and involuntary termination of employment must occur before 2/28/09)
- Extends the maximum duration of the COBRA subsidy from 9 months to 15 months
- Permits individuals to pay COBRA premiums retroactively for months in the "transition period" (defined below). Individuals are treated as having timely paid COBRA premiums for periods of coverage during the transition period if two requirements are satisfied: (1) the individual must have had COBRA coverage immediately before the transition period; and (2) the individual must pay the premium before the later of two dates - the date 60 days after enactment, or the date 30 days after the individual receives a new notice (see notice).

- Defines the "transition period" as any period of coverage beginning before date of enactment that is a month in the extended duration period (if enacted in December, the transition period would be limited to December 2009; if enacted in January, the transition period would include both December 2009 and January 2010)
- Requires plan administrators to provide a notice to individuals who were assistance eligible individuals on or after October 31, 2009, or who experience a qualifying event based on termination of employment after October 31, 2009. The notice must describe the changes made by the DoD Appropriations Act. If the qualifying event occurred before date of enactment, the notice must be sent within 60 days after date of enactment. If the qualifying event occurs after date of enactment, the notice must be provided consistent with the existing COBRA subsidy notice rules.
- Requires plan administrators to provide a notice to individuals who did not timely pay COBRA premiums for any month during the transition period, or who paid a COBRA premium for a month during the transition period greater than 35%. The notice must describe the changes made by the DoD Appropriations Act, including information on the ability to make retroactive premium payments for months in the transition period.
- Clarifies that the eligibility and notice rules that apply to the COBRA subsidy are based on the timing of the qualifying event.

SBA has confirmed that the third party COBRA administrators utilized by our clients are monitoring this closely and are prepared to administer the expected changes. That said, the final rules may be different from what is anticipated. SBA will continue to keep you updated with regard to any new developments.

Massachusetts Health Reform Updates

Final Minimum Creditable Coverage Changes Approved

The Health Connector has finalized a few modest changes to the Minimum Creditable Coverage (MCC) standards to take effect on 1/1/2011. These changes were taken up by the Health Connector Board and approved as final amendments to the MCC regulation (956 CMR 5.00) on December 10, 2009. The final changes were, for the most part, adopted as proposed by Connector Staff in October 2009.

- A new subsection was added to 5.03(2)(f) providing that, on or after January 1, 2011, a health benefit plan may not impose an overall annual maximum dollar limitation on prescription drug coverage.

Note: *The placement of this provision is slightly different from the proposed regulation, but the net effect is the same. As originally proposed in October, the definition of "core services" was to be expanded to include prescription drugs, effectively prohibiting an overall annual*

maximum benefit limit on prescription drug coverage. However, in response to public comments received by the Health Connector on the proposed version of the regulation, the Health Connector staff did not make prescription drug coverage a core service and, instead, placed the prohibition against annual dollar limits on prescription drug coverage in 5.03(2)(f).

- A new section 5.03(3) was created providing that, on or after January 1, 2011, a health benefit plan providing dependent coverage must provide coverage for all core services and all broad range of medical benefits to all covered persons under the health benefit plan. Since maternity and newborn care benefits are included in the "broad range" requirement, this change would cause a health benefit plan that did not provide maternity benefits for a pregnant dependent of the subscriber to deviate from the MCC standards. (Such a plan could, however, apply to the Health Connector for an MCC certification under the process currently available under the MCC regulation.)
- A technical change was made to the so-called HDHP "safe harbor" provision in the MCC regulation already scheduled to take effect as of January 1, 2010. Section 5.03(2)(k)2 now permits an HDHP / HRA combination as well as an HDHP / HSA combination for purposes of satisfying the "safe harbor" provision in the MCC regulation.

Fair Share Contribution Update

The Massachusetts Division of Health Care Finance and Policy (DHCFP) has made updates to its Fair Share Contribution (FSC) regulations to specify new requirements for group health plan documentation. These new requirements are of relevance only to employers with eleven (11) or more employees working at their Massachusetts Determining whether or not an employer is subject to these regulations is contingent on several factors: the count of full-time employees in its Massachusetts locations, the percent of those employees in the plan, and the amount of contributions from the employer towards the cost of the plan.

Should your plan be subject to Massachusetts unemployment insurance law, and you have 11 or more full-time employees, you are now required to file a quarterly FSC report, along with the Employer Health Insurance Responsibility Disclosure (HIRD) Form, with the Division of Unemployment Assistance. The filing deadline for the current quarter is February 15, 2010. For specific details, please visit <https://fsc.detma.org/>.

Under the new FSC rules, employers must maintain documentation with regards to their group health plan (both plan design and contributions). These new requirements are as follows:

REGULATORY REQUIREMENT	APPLICABLE DOCUMENTS
A written plan description, descriptions of benefits, the eligibility requirements and the employer contributions to the plan	<ul style="list-style-type: none"> · Plan Document with Plan amendments · Records and communiqués attesting to total plan costs and contributions
Evidence of the Plan in force during the quarter	<ul style="list-style-type: none"> · See above · The Group Contract
A written employee handbook or other employee communication explaining the plan and benefits, including the eligibility requirements and employer contributions	<ul style="list-style-type: none"> · Plan Document with Plan amendments · Initial eligibility materials · Annual Open Enrollment materials with benefits and cost changes, showing employer contributions

Also, new to the FSC regulations is the Premium Reimbursement Agreement (PRA) which allows for an employee purchasing individual health coverage to be reimbursed on a pre-tax basis for some, or all, of the premium by his/her employer. The PRA may qualify as a group plan under FSC regulations if:

- The Plan designates a plan or plans for employee enrollment;
- the employer communicates the designation(s) to its employees; and
- the Plan satisfies the other requirements for plans under the documentation table above.

In the case of a PRA, the employer will also need to process employee contributions for coverage through its Section 125 plan, so that employees are paying their portion on a pre-tax basis.

2010 Employee HIRD Form Released

The 2008 and 2009 Employee HIRD Forms were released in February of 2008 and 2009, respectively; too late for January 1 open enrollments. The Division of Health Care Finance and Policy recently released the 2010 version of the Employee HIRD Form on its web site. While perhaps not in time for many employers to use in conjunction with their 2010 annual enrollment, the timing of the release is better than previous releases, so the flow of information is moving in the right direction. The 2010 Employee HIRD Form can be downloaded at the following link: http://www.mass.gov/Eeohhs2/docs/dhcfp/g/hcr/employee_hird_2010.pdf.

Note: One noteworthy change to the 2010 Employee HIRD Form is that it no longer contains a space to enter the employee's Social Security Number.

Please do not hesitate to contact us with any questions regarding these regulations.

Amendment to NY COBRA Extension

Earlier this year, New York Governor Paterson signed a law which extends New York state-required COBRA coverage from 18 to 36 months. To be more specific, it requires that when an individual exhausts 18 months of federal COBRA coverage, they get another 18 months of state continuation coverage.

Originally the new law applied to contracts/policies issued, renewed, modified, altered or amended on/after July 1, 2009. On November 19, 2009, New York State November 1, 2009, regardless of when the group health contract/policy was issued, modified or renewed. Employees whose COBRA expired between July 1, 2009, and November 1, 2009 must be given the opportunity to elect the 18 months of state continuation coverage. If you have insured group health plans in New York, it is important to speak with your carrier and/or COBRA administrator about this special enrollment period. amended the effective date to

Please contact us if you have any questions or would like more detail regarding this law.

Our special thanks to Chip Kerby of Liberté Group LLC and Rick Szczebak of Parker Brown & Macaulay, P.C. for their contributions to this alert.

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