

INSURANCE LAW ALERT

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Updated Model Notices for COBRA Subsidy Extension

On January 13, 2010, the U.S. Department of Labor (“DOL”) issued updated model notices for the COBRA subsidy originally authorized under the 2009 American Recovery and Reinvestment Act (“ARRA”). ARRA, as amended by the Department of Defense Appropriations Act, 2010 (the “Defense Act”), requires health plans to notify certain current and former participants and beneficiaries about the premium reduction.

The Defense Act confirmed an extension of the COBRA subsidy, providing an extension of eligibility to February 28, 2010 and extending the maximum period for receiving the subsidy for an additional six months, for a total of fifteen months. See December 2009 and April 2009 Insurance Law Alerts.

The DOL created model notices to assist plans and individuals in complying with the notice requirements. Each model notice is designed for a particular group of qualified beneficiaries and contains information to help satisfy ARRA's notice provisions, including those added by the Defense Act. Thus, the DOL has issued updated model notices.

The Model General Notice

Group health plans subject to COBRA must provide the updated model General Notice to all qualified beneficiaries who have not yet received a COBRA election notice and who experience any qualifying event during the period of September 1, 2008 through February 28, 2010. The updated model General Notice includes updated information regarding the extension of the subsidy under

the Defense Act for qualifying events occurring on or before February 28, 2010 and the extension of the maximum period for receiving the subsidy up to fifteen months, as well as information required in a COBRA election notice.

Note: Individuals who experienced a qualifying event in December 2009, but who were not eligible for COBRA coverage until January 2010, were likely not provided proper notice. These individuals should receive the updated Model General Notice no later than February 17, 2010. These individuals should also receive the full 60 days from the date the updated Notice is provided to make a COBRA election.

The Model Premium Assistance Extension Notice

No later than February 17, 2010, plan administrators are required to provide an additional notice regarding the changes made to the premium reduction provisions of ARRA by the Defense Act to certain individuals who have already been provided a COBRA election notice that did not include the changes as amended under the Defense Act. These individuals include:

- Individuals who were “assistance eligible individuals,” or “AEIs,” as of October 31, 2009 (unless they are in a transition period - defined below);
- Individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice);

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- AEs who were dropped from coverage for failure to pay premiums between the end of the original subsidy period and the date of enactment of the Defense Act.

Individuals who are in a “transition period” must be provided this Premium Assistance Extension Notice within 60 days of the first day of the transition period. An individual’s “transition period” is the period that begins immediately after the end of the maximum number of months (generally nine) of premium reduction available under ARRA prior to its amendment. An individual is in a transition period only if the premium reduction provisions would continue to apply due to the extension from nine to 15 months and they otherwise remain eligible for the premium reduction.

In addition to providing detail regarding the extension under the Defense Act, the model Premium Assistance Extension Notice provides detail allowing certain individuals to make a retroactive payment of the reduced premium for the period(s) of coverage immediately following what would have been the last period subject to the premium reduction. The Notice further provides that such a payment must be made by the later of February 17, 2010, 30 days from the date this Notice was provided, or the end of the otherwise applicable payment grace period.

Note: Groups listed above *may* overlap, creating a situation where an individual may be entitled to multiple notices. The DOL has stated that providing the Premium Assistance Extension Notice by the earliest date required will satisfy the notice requirement(s).

The Model Alternative Notice

The updated model Alternative Notice is for use by insurance issuers that provide group health insurance coverage to persons who became eligible for continuation coverage under state law (not federal). The updates are similar to those in the updated model General Notice. Continuation coverage requirements vary among states, and issuers should modify the model Notice as necessary to conform it to the applicable state law.

The DOL website provides updated model notices, as well as other timely information regarding the premium subsidy extension, general FAQs for both employees and employers, and IRS information.

<http://www.dol.gov/ebsa/cobra.html>. ■

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