

Group & Individual Marketing News Bulletin



South Carolina

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COBRA Subsidy

The American Recovery and Reinvestment Act of 2009 (ARRA) signed into law on February 17, 2009, includes a number of health-related provisions, including a temporary COBRA subsidy. This subsidy will require additional responsibilities for employers that are subject to COBRA, as well as small employers subject to state continuation coverage. Below are some of the details regarding this subsidy:

- The purpose of the Act is to assist eligible individuals who are **involuntarily terminated** in maintaining their health care coverage by reducing their COBRA premium payments.
- The Act provides a subsidy of 65 percent of the COBRA premiums for employees (and their families) who were **involuntarily terminated** between September 1, 2008, and December 31, 2009, and who are otherwise eligible for COBRA.
- The employer can promptly recover the premium by claiming a credit as an offset against federal payroll taxes. To recover the 65 percent subsidy amount paid by the employer, employers may deduct these amounts from their employment tax deposits and report these offsets on Amended Form 941.
- The assistance will be available for a maximum of nine months. It may end earlier if certain conditions exist.
- All group health plans that are normally subject to COBRA are eligible for the subsidy, with the exception of Flexible Spending Accounts.
- A group not subject to COBRA (under 20 employees) is required under South Carolina law to offer its employees state continuation coverage. Because the law requires the insurer to provide the subsidy for non-COBRA eligible groups, you may submit only the 35 percent employee contribution to BlueCross and we will supply the additional 65 percent contribution.
- Employers are allowed, but not required to, offer all beneficiaries eligible for subsidy assistance the opportunity to elect another health plan offered by the employer that has a lower premium cost.
- By April 17, 2009, a special notice must be sent to all qualified beneficiaries who

experienced any type of qualifying event on or after September 1, 2008, and who have not elected COBRA or state continuation coverage. The notice must advise them of an additional opportunity to elect continuation coverage within 60 days from the date the notice is provided.

- If COBRA or state continuation coverage is elected during this new election period, coverage will be provided retroactively as of March 1, 2009, (not to their original qualifying event date). However, the 18, 29 or 36 month COBRA-continuation period will still be measured from their original qualifying-event date. Any period from the qualifying event date to March 1, 2009, will not be considered a break in coverage for pre-existing condition purposes.
- By April 17, 2009, employers must also send a notice to any former employees and dependents who have already enrolled in continuation coverage, or those who are currently in their election period, advising them of the availability of the 65 percent subsidy if they meet the necessary eligibility requirements.

Please keep in mind these provisions are new, and additional guidance will continue to become available. Additional information is also available through the Internal Revenue Service's Web site at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

Employer Actions

In order to implement these changes, BlueCross will need for employers and groups to:

- Identify any former employees who were involuntarily terminated on or after September 1, 2008.
- Discuss with us how we can receive information from them regarding future involuntary terminations.

Communications

We will continue to communicate with you as we receive additional information about this legislation.

For More Information

Attached is a Frequently Asked Questions document developed on February 27, 2009, to help you to better understand the COBRA subsidy. Information is also available through the Internal Revenue Service's Web site at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

If you have questions or need more information, please contact your BlueCross marketing representative.

American Recovery and Reinvestment Act of 2009 Frequently Asked Questions

What is the American Recovery and Reinvestment Act of 2009 (the “Act”)?

The Act is the economic recovery bill signed into law on February 17, 2009 by President Obama. It includes a number of health-related provisions, especially the temporary COBRA subsidy. Under the terms of this law, the subsidy may also be applied to premiums for state continuation coverage.

What is the purpose of the temporary COBRA subsidy?

The purpose of the subsidy is to assist eligible individuals to keep their health care coverage by reducing their COBRA premium payments. The Act will provide \$21.4 billion to subsidize COBRA premiums for up to nine months for workers (and their families) who have been involuntary terminated.

Questions pertaining to the Individual

Who is eligible for the COBRA subsidy?

An employee, or former employee, and his or her dependents who were covered immediately prior to the employee's termination. For purposes of eligibility for the subsidy, only employees who were involuntarily terminated qualify and only if the termination occurred during the period beginning September 1, 2008, and ending December 31, 2009. The individual must also be eligible for COBRA coverage, or state continuation coverage, during this period.

Is the subsidy only for employees who involuntarily lose their jobs, or will it apply to all employees even if they leave voluntarily?

The credit applies only to involuntarily terminated employees and their family members who are qualified beneficiaries.

Involuntarily terminated is not defined in the Act. Hopefully further guidance will help define what “involuntarily terminated” means.

What is the amount of assistance an eligible individual will receive?

The amount of the subsidy is 65 percent of the COBRA premium. The COBRA premium is the amount charged to the beneficiary.

Any premium paid for a period of coverage after February 17, 2009, for an eligible individual shall be treated as having paid the COBRA premium if the individual pays 35 percent of the amount of the premium. A person other than the individual's employer may pay on behalf of the individual.

What if an eligible individual pays the full premium amount instead of just 35 percent?

The group health plan or insurer must reimburse the individual any amount over 35 percent (within 60 days of receiving the payment), or provide a credit against future premium payments. Unless the credit is going to be used within 180 days of the full premium payment, the plan/insurer must reimburse the individual.

How long will the assistance last?

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The subsidy may be used for a maximum of nine months. If the person obtains other group coverage or Medicare, or fails to pay their share of the premium, they no longer qualify. For example, if the person was terminated on September 1, 2008, and went on COBRA, he or she will already have paid six months of COBRA premiums. Starting March 1, the person would only have to pay the 35 percent premium. His or her subsidy will run out nine months later; so starting December 1, 2009, the person would need to pay the full COBRA premium amount again.

Can an employee choose to take the subsidy instead of going on another group's coverage?

No, if a former employee is eligible for any other group health coverage or another program, such as Medicare, they cannot choose to use the subsidy. An employee who uses the subsidy without being entitled to it can be penalized up to 110 percent of the subsidy amount. However, an employee in a waiting period (probationary period) for the new group coverage may continue on COBRA and use the subsidy.

Will the COBRA premium subsidy be taxable income for the individual?

The premium subsidy is not included in the individual's income. However, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liabilities if they receive subsidies. The phase-out impacts individuals whose modified adjusted gross incomes exceed \$125,000, or \$250,000 for those filing joint returns. Tax liability is increased, to achieve repayment of a portion of the subsidy, for those taxpayers whose modified adjusted gross incomes are between \$125,000 and \$145,000, or \$250,000 and \$290,000 for those filing joint returns. If a taxpayer's modified adjusted gross income exceeds \$145,000, or \$290,000 for those filing joint returns, the full amount of the subsidy must be repaid as an additional tax. There is no additional tax for individuals with modified adjusted gross incomes less than these income levels.

Questions pertaining to the Employer

Is the employer required to provide the COBRA subsidy?

The subsidy applies to group health plans that are subject to the Federal COBRA continuation coverage requirements or to state continuation coverage under South Carolina law. If you are an employer with a COBRA-eligible plan and you receive a 35 percent payment from an eligible individual, you are required to make the remaining 65 percent payment. If your group health plan is required to offer state continuation coverage (this includes any plan not required to offer COBRA), you may submit only the 35 percent employee contribution to BlueCross and we will supply the additional 65 percent contribution.

How do I calculate the premiums due and the subsidy?

For example, if the real cost of the employee's health coverage is \$300.00 per month, for continuation coverage, the employer is allowed to charge 102 percent of that amount to cover the actual premium and an administrative fee. That means the total COBRA charge for that person would be \$306.00. If this employee is eligible for the subsidy, the employee would give you \$107.10 (35 percent of the \$306.00). The employer would add the remaining \$198.90 as its subsidy. The amount the employer paid (\$198.90) may be used as a credit to reduce its payroll tax deposits. The employer may only take this credit if the employee actually paid the premiums. For non-COBRA groups, where BlueCross supplies the subsidy, the credit will be taken by BlueCross. Only the person or company who provides the subsidy is eligible to offset its payroll taxes by the amount of the subsidy.

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What if I've been charging the former employee less for continuation coverage and making up the difference?

The employee will only be responsible for 35 percent of the reduced cost. For example, the COBRA premium is \$1000, but the employer only charges the employee \$200 to purchase COBRA. The employee will now be required to pay only \$70 (35 percent of the \$200). The employer will include the remaining amount, \$130 (65 percent of \$200), as its subsidy.

What do I do about premiums paid prior to now?

Nothing. The subsidy is not retroactive, and the employer cannot take a credit against any premiums payments before March 1, 2009. No credit or refund will be given for premiums already paid. The subsidy does not apply until the first payment made after February 17, 2009.

How will an employer be reimbursed for the COBRA subsidy that it has provided to eligible individuals?

The COBRA subsidy amount is reimbursed by being claimed as a credit on the Form 941. The [Form 941](#) has been revised to allow for this credit.

How does an employer claim the credit for the COBRA subsidy?

The credit is claimed on Line 12a of the January 2009 revision of the Form 941, which was posted on the IRS Web site on Feb. 20. In addition, the Form 941 filer also needs to include the number of individuals provided COBRA premium assistance on Line 12b.

What other information relating to the COBRA subsidy must be submitted with the Form 941 besides the entries on Lines 12a and 12b?

No additional information relating to the COBRA subsidy is to be submitted with the Form 941, either electronically or in paper form. However, those claiming the credit must maintain supporting documentation for the credit claimed. Such documentation includes, but is not limited to:

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35 percent share of the premium.
- In the case of an insured plan, copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage.
- A record of the SSNs of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for 1 individual or 2 or more individuals.
- Other documents necessary to verify the correct amount of reimbursement.

The employer paid the bill and took the credit for March. In April the employer finds out that the employee did not continue his/her coverage (i.e., did not pay the 35 percent). The credit element must be allowed to be a negative, which would increase the deposit due.

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The premium subsidy and the related credit for the employer apply only after the individual has paid his or her 35 percent of the premium, so this situation should not occur.

What will happen if Line 12a ends up being larger than Line 10 on a 941 return? Will this result in a net negative of taxes for a company?

If Line 12a is larger than Line 10, Line 13 would also be larger than Line 10, resulting in an overpayment that could be applied to the next return, or requested as a refund.

Is the IRS considering any other form changes (e.g., 941X)?

Yes. All appropriate forms are being revised and will be updated on the IRS.gov Web site as soon as possible.

Will the due date for the first-quarter Form 941 be extended?

No, the due date for the first quarter 2009 Form 941 is not being extended.

Would the number of beneficiaries need to be reported each quarter, whether or not there was a tax credit amount to apply?

Line 12b of the revised Form 941 must indicate the number of individuals who received the total COBRA subsidy reported on Line 12a of the Form 941. If there is no tax credit amount because no subsidy was provided, then the entry on Line 12b would be zero.

Can an employer decide only to claim the credit at the end of the quarter rather than reducing its tax deposits during the quarter?

Yes. The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter. **However, the employer may not wait until the end of the tax year to take all of its credit. The credit must be taken in the quarter in which the subsidy is provided.**

COBRA Notice Questions

Who should receive a COBRA notice?

COBRA notices must be provided to all individuals who terminate employment between September 1, 2008 and December 31, 2009, not just to those who were terminated involuntarily.

What notice must I give current employees who are terminated after February 17, 2009?

The current notice to plan participants of their COBRA eligibility must now include information regarding the availability of these premium subsidies and of the option to enroll in different coverage if the employer so permits. There are specific requirements for these notices. A model notice will be developed by the Department of Labor by March 19, 2009.

What about individuals who were terminated between September 1, 2008 and February 17, 2009?

Individuals who would have been eligible for the subsidy but are not currently receiving COBRA coverage must be given a special 60-day period to elect coverage. This is true for individuals who did not elect COBRA and for those who elected and then discontinued coverage. A notice must be given to these

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individuals by April 17, 2009 containing additional information. Individuals will have a 60-day election period from the date the notice is provided to the individual. A model notice will be developed by Health and Human Services by March 19, 2009. As of the date of this bulletin, it is unclear whether employees and dependents eligible for state continuation will have a second "opt-in" period.

What happens when a former employee eligible for this subsidy elects COBRA (or state continuation)?

As soon as the employee elects COBRA, they will be placed back on the group health plan as of March 1, 2009. For employees terminated after March 1, they will be eligible for the subsidy as of the date they lose coverage under the group health plan, just as under current COBRA rules.

What about HIPAA break-in-coverage rules?

Individuals will not be considered to have a lapse in coverage for determining if a pre-existing condition waiting period could be applied.

Additional Information

What governmental agencies will provide information about the COBRA subsidy?

Information about the COBRA subsidy will be available through the Department of Labor, the Department of Health and Human Services, and the Internal Revenue Service, which all share responsibility for the COBRA requirements.

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