

## Stimulus Bills Contain Major COBRA Changes

The House of Representatives and Senate have each passed an economic stimulus bill, and both bills include provisions that would significantly expand the COBRA obligations of group health plan sponsors. Congress is expected to reconcile the two bills and pass new legislation soon, and the COBRA provisions may go into effect as early as **March 1, 2009**. If enacted, the new COBRA provisions will have an immediate impact on health plan administration and costs. Group health plan sponsors should start to consider how they will deal with the new COBRA rules.

The House bill (HR 1) includes two important COBRA changes: a COBRA premium subsidy for involuntarily terminated employees and an extension of COBRA coverage for older and long term employees. The Senate bill includes only the COBRA subsidy.

### BACKGROUND

COBRA, a federal law enacted in 1985, requires group health plans to permit employees and certain covered dependents – so called “qualified beneficiaries” - who lose coverage as a result of the employee’s termination of employment, to elect to continue that coverage for up to 18 months. The employee or dependent must pay the full cost of continued coverage plus a 2% administrative fee. COBRA generally applies to a group health plan if the employer and its affiliates had 20 or more employees in the prior year.

### PROPOSED NEW COBRA SUBSIDY

Both the House and Senate versions of the stimulus bill include provisions that would require employers to subsidize a portion of the COBRA premiums for employees who are involuntarily terminated between September 1, 2008 and December 31, 2009, and their eligible dependents. Under the House bill, the subsidy is equal to 65% of the COBRA premium; the Senate bill provides for a 50% subsidy. Thus, the COBRA qualified beneficiary would pay 35% (or 50%) of the COBRA premium to the employer, and the employer would pay the remaining 65% (or 50%) of the premium to the insurer. An employer that must pay this subsidy can be reimbursed by withholding the subsidy payment as a credit against its payroll taxes. The subsidy would apply to COBRA premiums for both employees and dependents, and would be available for a maximum of 12 months. (COBRA coverage



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will still be available for a total of 18 months after a termination of employment, as is true under current law.) Eligibility for the subsidy would end when the employee or dependent becomes eligible for coverage under another group health plan or Medicare. The former employee or dependent must notify the employer when he or she becomes eligible for this other coverage.

Under the Senate bill, an employee could elect to enroll in a lower cost health plan option offered by the employer.

The subsidy would become effective almost immediately – March 1st under the House bill or April 1st under the Senate bill (assuming that a final stimulus bill is enacted this month). Eligible employees who had not previously elected COBRA coverage would have a new 60 day special COBRA election period.

**COBRA EXTENSION**

The second proposed COBRA change – included in the House bill, but not in the Senate bill – is much more onerous. The House provision would allow any group health plan participant who terminates employment and who is either age 55 or has 10 years of service to remain on COBRA until age 65, or until he or she obtains other group health plan coverage. The current 18 month limit on employers’ COBRA obligation after employment termination would be eliminated. In effect, this provision would require employers to provide retiree health coverage until age 65. The provision would apply to voluntary as well as involuntary terminations.

Both bills would also require that group health plan sponsors furnish additional notifications to employees and dependents affected by the new requirements.

**LOOK FOR FINAL LEGISLATION**

We will monitor the proposed legislation and advise you of any new developments. In the meantime, employers should begin to consider how the proposed changes would impact their group health plans.

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