The American Recovery Reinvestment Act of 2009

Administration Resources Corporation Overview

Updated March 9, 2009

The American Recovery Reinvestment Act (ARRA) was signed into law by President Obama on February 17, 2009. We provided a summary of the requirements as we knew them at that time. Much of that information has not changed. However, this latest update includes some additional guidance that has been released since the bill was signed into law.

Premium Subsidy

Premium relief in the form of a subsidy of 65% (eligible QBs would pay 35% of the applicable premium) is available for individuals who lost their group health plan coverage due to involuntary termination (for other than gross misconduct). "Involuntary" is not specifically defined in the law.

UPDATE: According to the FAQs released by the House Ways & Means Committee, involuntary termination is termination that is at the direction of the employer (excluding termination of employment for "gross misconduct"). Employees may contact the Department of Labor's Employee Benefits Security Administration's Benefits Advisors at 1-866-444-3272 for more information regarding termination. The term "applicable premium" in this context includes the 2% administration fee, if charged to the Qualified Beneficiary.

The subsidy also applies to coverage under a State program that provides "comparable continuation coverage." "Comparable continuation coverage" is not defined.

The definition of group health plan used in the law references section 607(1) of the Employee Retirement Income Security Act of 1974 (ERISA) which generally includes dental or vision coverage. The law specifically excludes health flexible spending arrangements (health FSA) under a cafeteria plan.

UPDATE: The definition of health plan has not changed and can include health reimbursement arrangements (HRAs) and Employee Assistance Plans (EAPs) if subject to COBRA, as well as wellness plans, if subject to COBRA.

Premium subsidies are available for individuals with annual gross incomes up to $125,000 (single) or $250,000 (joint return). Subsidies are phased out for those with adjusted gross income up to $145,000 (single) and $290,000 (joint return).

Who is Eligible for the Premium Subsidy?

Qualified Beneficiaries (QBs) (and their spouse, and/or dependents) who lose coverage due to *involuntary termination* (excluding gross misconduct) are eligible for the subsidy. However, the qualifying event date must have occurred on or after September 1, 2008 and not later than December 31, 2009.

An employee who elected COBRA initially but then lost coverage due to nonpayment of premiums will also be entitled to the premium subsidy.

The premium subsidy will last up to 9 months from the date of the first month's subsidy or:

- When a terminated employee is either offered other employer health coverage or becomes eligible for Medicare, or
- COBRA is exhausted, or
- The individual fails to pay his or her 35% share of the applicable premium.

The QB will be required to notify the COBRA administrator when he or she becomes eligible under another group health plan. Failure to notify the COBRA administrator may result in a penalty of 110% of the premium reduction provided after termination of eligibility.

UPDATE: Loss of coverage due to termination of employment is a potential HIPAA Special Enrollment event. An individual who is involuntarily terminated may be eligible for his or her spouse's employer's coverage due to this Special Enrollment event and would not be eligible for the premium assistance.

2nd 60-Day Election Period

An eligible individual who was previously offered COBRA and did not elect as of the enactment of the bill will get a second 60 day election period after notice of the new requirements is provided.

Also, any eligible individual who is currently in their initial 60 day election period will have an additional 60 day election period after notice of the new requirements is provided.

A notice detailing this right to elect coverage along with the steps necessary to elect coverage must be provided to these individuals within 60 days of the enactment of ARRA (which was February 17, 2009), along with any forms that are necessary in order for them to establish their eligibility for the premium subsidy.

These individuals will then have 60 days after the notice is provided in which to elect COBRA coverage. However, coverage is not retroactive to prior periods during which the individual was eligible but had not elected COBRA.

UPDATE: The second 60 day election period *may* apply to state-only continuation (referred to as "mini-COBRA").

The DOL Premium Reduction Fact Sheet states: This special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that is subject to State law.

However, the DOL FAQs for Workers and their Families states: For individuals eligible for State continuation coverage (such as state "mini-COBRA"), your state may choose, but is not required to provide, a second election period.

We recommend that you check with the insurance carrier with regard to this provision.

Employer Responsibilities
The employer/plan sponsor is responsible for confirming whether termination was voluntary or involuntary. The entity (employer) providing the COBRA coverage will receive reimbursement for the subsidy via an employment tax credit. Reporting by the employer to the IRS will be required in order for the entity to receive reimbursement.

Summary of reporting requirements:

- Attestation of involuntary termination of each assistance-eligible individual
- Report payroll taxes offset for the current period (and the estimated offset for the subsequent period)
- Report the taxpayer identification numbers (TINs) of assistance-eligible individuals
- Report the amount of subsidy received and whether the subsidy covered one or more qualified beneficiaries

UPDATE: The IRS has revised the employer's quarterly tax return (Form 941) to accommodate the entry of the employer's tax credit attributable to the 65% subsidy. The IRS has provided additional subsidy guidance at:
http://www.irs.gov/newsroom/article/0,,id=204708,00.html

When Does Coverage Begin
COBRA changes could take effect as early as March 1, 2009, applying only to periods of coverage (generally months) beginning on or after March 1, 2009. If the individual elects COBRA coverage, the coverage is not required to be retroactive to the date of the loss of regular coverage.

Notice Requirements
Eligible individuals already on COBRA must be provided a notice of their subsidy rights. Individuals who are not enrolled under COBRA but are eligible for the second election period must also be provided a notice of new election rights. These notices must be provided within 60-days of enactment of the law, which was February 17, 2009, making the deadline, April 18th, 2009.

Notices must include:

- The availability of the subsidy
- Second chance election rights
- Information required to establish eligibility for the subsidy
- How to elect the subsidy
- The option to elect less expensive alternative coverage if allowed by the employer *(This is strictly optional according to ARRA).*
- The individual's obligation to notify the COBRA administrator when the individual is eligible for other coverage or Medicare

These notice criteria may be included in existing COBRA election notices or may be provided as a separate notice sent with an election notice.

The DOL is required to draft model notices within 30 days after the Act became law on February 17, 2009, which would be March 20.

UPDATE: Notice must be provided to *any* individual who experiences a qualifying event from September 1, 2008 through December 31, 2009. Unlike we reported earlier, because of a great deal of uncertainty about the nature of the DOL model notice (rumored to perhaps be more than one model notice), ARC has decided to wait until the publishing of the DOL notice before sending the notice to QBs.

Miscellaneous Provisions

Other coverage options: ARRA also provides involuntarily terminated employees and their dependents up to 90 days to select coverage under a different, lower-cost coverage option than the one they were enrolled in at the time of involuntary termination, if such option exists. Also, qualified beneficiaries have this option only if the employer allows these elections. The new coverage option also would have to be offered to active employees and may not be a limited option such as dental, vision or health FSA benefits, or certain treatment provided by on-site medical facilities.

Eligible individuals that pay full COBRA premium for either March or April coverage: Because of the short timeframe for compliance, ARRA provides that the plan's sponsoring employer must either refund the 65% subsidy amount to an eligible individual or credit the subsidy against the eligible individual's future COBRA premiums if it is reasonable to believe that the credited amount will be used within 180 days.

Coverage gap: Any resulting gap in coverage may not be counted toward a 63-day break in coverage that would otherwise cause the individual's creditable coverage to be lost, thereby subjecting the individual to another preexisting condition limitation or exclusion.

UPDATE:

How is Administration Resources Corporation going to assist in complying with this new law?

1. **Premium Subsidy.** Administration Resources Corporation will be administering the premium subsidies. We will, however, be requiring assistance from our clients in identifying who is eligible. We will be emailing a list of Qualified Beneficiaries from our system with event dates occurring on or after 9/1/08 to our clients by March 13. All the Plan Sponsor needs to do is indicate with a checkmark which Qualified Beneficiaries were offered COBRA due to an Involuntary Termination.

   Upon receiving confirmation from our clients of the Qualified Beneficiaries who are eligible, ARC will then be contacting all Qualified Beneficiaries with the appropriate notices and inform them of the details of the Stimulus Package and how it may or may not effect them. Those Qualified Beneficiaries who meet all of the requirements, and who elect the coverage and submit timely payment, will receive the subsidy and ARC will reinstate coverage according to our standard processes.

2. **Second 60-Day Election Period.** ARC will also be administering the second election period. Again, following receipt of confirmation of eligibility from our clients, we will extend this benefit to those Qualified Beneficiaries who previously did not elect coverage and to those currently in their COBRA election period.

UPDATE (continued):

Notice Requirements. There is a potential that there will be more than one model notice provided by the DOL. ARC has determined that it is prudent to wait for the DOL model notice(s) before sending the new notices to all Qualified Beneficiaries who experienced a qualifying event on or after September 1, 2008.

3. **Miscellaneous Provisions.**

   Other coverage options. The Act allows for the employer, as an optional feature, to offer those eligible for the subsidy the choice of electing, if available, a lower-cost medical coverage during this 9 month period. As part of our future communication to our clients, ARC will be inquiring if the client would like to offer this choice to those individuals who are eligible. If this optional feature is requested to be provided to these eligible individuals, additional administration fees would be applicable in order to cover our expenses associated with offering this additional benefit. Based upon our conversations with brokers and clients, we are not seeing much interest in this option.

4. **Eligible individuals who pay full COBRA premium for either March or April coverage:** As part of our standard processes, ARC will adjust accounts for those individuals who have already paid premiums for March or beyond and will either apply the credit to their account, or, if applicable, send refunds to them.

ARC Optional Service Fees: These fees will only be applicable for those clients who elect these optional services from ARC:

Option 1. Monthly Reporting to Assist in the Tax Filing Form 941:
ARC will supply a monthly report to any client that elects this option with the necessary information needed to receive the tax credit.
Monthly Cost $35.00

Option 2. Offering Lower Cost Coverage Option:
If the Plan Sponsor chooses to have ARC offer a lower cost alternative benefit plan, if available, ARC will charge a per notice fee.
Per Notice Fee $50.00*

Option 3. New Client Catch-Up:
For any client that came on board with ARC after 9/1/08, ARC will assist with the mailing of required notices to Qualified Beneficiaries who were offered COBRA by a previous administrator prior to the Plan Sponsor's effective date with ARC at a per notice fee. A standard file format will be required for receiving this information.
Per Notice Fee $35.00*

* These per notice fees are in addition to any monthly minimum fees.