

American Recovery and Reinvestment Act

COBRA Information and Questions and Answers

FREQUENTLY-ASKED QUESTIONS ON THE ARRA COBRA PROVISIONS – April 14, 2009

TOPICS

General Information

Eligibility

Plans (Church, Medical, Dental, HRA ...)

Notification

Subsidy

Severance

State Continuation

Administration

Costs – Rates and Premiums

Reporting

Communication – To Employers, Members and Channel Partners

Employer Responsibilities

GENERAL INFORMATION

What is the effective date of the new law?

The American Recovery and Reinvestment Act (“the Act”) is effective February 17, 2009, the day that President Obama signed the bill. All of the COBRA provisions that have a time frame will date from that

day. For example, notices are required to be sent to subsidy-eligible persons who became qualified beneficiaries before the date of enactment (2/17) within 60 days of enactment. As for calendar monthly billed programs, the effective date is March 1, 2009.

What is the subsidy?

It allows eligible individuals to receive a premium subsidy from the federal government in the amount of 65% of a COBRA qualified plan. Eligible individuals will only have to pay 35% of the COBRA premium to continue coverage.

How does the ARRA COBRA subsidy work?

The entity that pays the 65% subsidy (the multiemployer group health plan, employer or insurance carrier) is permitted to take the amount of any subsidy payments as an offset against their payroll tax payments to the federal government. The subsidy may be offset from employee income tax withholding, employee FICA tax withholding or employer FICA tax obligations.

The Internal Revenue Service (IRS) has released a revised Form 941 and Instructions for reporting the amount of the premium subsidy that is taken as a payroll tax credit.

What plans does the Act apply to?

The Act covers all plans, both insured and self-funded, that are subject to COBRA and state and municipal plans that are subject to the Public Health Service Act which provides provisions parallel to that of COBRA. In addition, the subsidy applies to non-COBRA plans that are subject to state continuation laws that are comparable to COBRA.

ELIGIBILITY

Who is an eligible individual?

An eligible individual is someone who is “involuntarily terminated” from employment during the period of September 1, 2008 through December 31, 2009 and is eligible to elect COBRA during that time.

Employees with modified adjusted gross income (MAGI) that exceeds \$250,000 (for joint returns) or \$125,000 (for all other filers) will not be eligible for the full premium subsidy. The premium subsidy will be fully phased out for those individuals with MAGI of \$145,000/\$290,000.

Individuals who exceed these income limits must repay any subsidy he/she realized. These repayments are reported on the individual's income tax return.

Individuals may make a permanent election to waive the subsidy.

What does “involuntarily terminated” mean?

Persons who are involuntarily terminated from employment are eligible for the subsidy. This is not a term that is defined either in ARRA or in COBRA generally. The COBRA ban on persons who were terminated for “gross negligence” would continue to operate and those persons would not have COBRA at all. However, anyone who is laid off, fired or otherwise dismissed from a job involuntarily during the applicable periods would likely be eligible. Moreover, even if an employee quits his or her job in anticipation of an adverse employer action (lower pay, relocation or reduced hours, for example) and loses coverage, the subsidy will apply. Employees who are told not to come back to work until further notice and who go on COBRA during that time period are considered to be involuntarily termination under ARRA. This would also apply to furlough situations where the employees are not working and become eligible for COBRA. However this does not apply to situations where the employer reduces the number of hours the person works but where the person continues on the job. A retirement, if the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that he or she would be terminated is considered involuntary termination. A resignation as the result of a material change in the geographic location of employment for the employee is also an involuntary termination.

Who isn't eligible for the subsidy?

- Employees who were terminated for gross negligence are not eligible
- Except as noted elsewhere, employees who terminated voluntarily are not eligible
- Employees who were eligible for COBRA prior to 9/01/08 are not eligible

What about domestic partners?

Domestic partners are generally not recognized under COBRA. However, in some circumstances where the employer allows domestic partners to continue with the eligible employee, the presence of the domestic partner may have an impact on the cost of the coverage and the subsequent subsidy amount. For example, if the domestic couple has family coverage, it is clear that the intent of the Act is to provide subsidy only for the employee, not the domestic partner.

How are premiums for domestic partners bifurcated?

The IRS has issued the following Q&A in Notice 2009-27 to help explain this:

Q-25. If the COBRA continuation coverage of one or more assistance eligible individuals also covers one or more individuals who are not assistance eligible individuals, how is the premium paid by the assistance eligible individual for COBRA continuation coverage allocated between the assistance eligible individuals and the other individuals?

A-25. Amounts paid by an assistance eligible individual for COBRA continuation coverage covering one or more individuals who are assistance eligible individuals and one or more individuals who are not assistance eligible individuals are allocated first to the cost of covering assistance eligible individuals and then to the cost of covering nonassistance eligible individuals. Thus, if the cost of covering a non-assistance eligible individual does not add to the cost of covering the assistance eligible individuals, then the cost of covering the non-assistance eligible individual is zero, and the premium reduction applies to the full amount paid for the COBRA continuation coverage. If the cost of covering a non-assistance eligible individual adds to the cost of covering the assistance eligible individuals, it is the incremental cost that is ineligible for the premium reduction.

Example 1. An individual and the individual's two dependent children are assistance eligible individuals and have COBRA continuation coverage. The COBRA continuation coverage also covers an individual who is not an assistance eligible individual. The amount the plan requires to be paid for COBRA continuation coverage for self-plus-two-or-more-dependents for non-assistance eligible individuals is \$1,000 per month.

The amount the individual would pay (but for the ARRA premium reduction) for covering the individual and the two children (the assistance eligible individuals) under the COBRA continuation coverage is \$1,000 per month. The additional premium amount for coverage of the individual who is not an assistance eligible individual is \$0 per month. The individual is entitled to apply the premium reduction to the \$1,000, and is entitled to COBRA continuation coverage upon the timely payment of \$350 (35 percent of \$1,000) for the coverage.

What about dependents?

Dependents will be eligible for a subsidy of their own if they experience a second qualifying event during the subsidy period. For example, if a subsidy-eligible former employee divorces his or her spouse during the subsidy period, the divorced spouse will be independently eligible for the subsidy. The subsidy period in this case will date from the earliest subsidy trigger event, i.e., the employee's involuntary termination.

What happens in case of divorce?

If a subsidy-eligible former employee divorces his or her spouse during the subsidy period, the divorced spouse will be independently eligible for the subsidy. The subsidy period in this case will date from the earliest subsidy trigger event, i.e., the employee's involuntary termination.

Does an involuntary termination of an employee following another qualifying event, such as a divorce, satisfy the requirements for the qualified beneficiary from the first qualifying event to be an assistance eligible individual?

No. Generally, if COBRA continuation coverage is based on a qualifying event before the involuntary termination, the later involuntary termination does not cause the qualified beneficiary to become an assistance eligible individual.

What does it mean to those individuals who are already on COBRA?

Individuals who elected COBRA due to an involuntary termination on or after September 1, 2008 but prior to the date of enactment (2/17/09) are eligible to receive the 65% subsidy on a prospective basis; not retroactive to when they first elected COBRA.

What does it mean to those individuals who might have elected COBRA, but didn't?

Individuals who were eligible to elect COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination but did not elect COBRA will be given the opportunity to elect COBRA on a prospective basis. The maximum coverage period will still be measured from the earliest date that COBRA coverage could have been elected, but coverage will not be retroactive. The coverage would generally date from March 1, 2009.

What does it mean to those individuals who elected COBRA on or after September 1, 2008, but dropped it prior to enactment?

These individuals are entitled to elect COBRA during the period beginning on the date of enactment (2/17/09) and ending sixty (60) days after the date on which they are notified of the additional election period.

What rights are available to individuals who do not receive a subsidy, but believe they should have?

An individual who does not receive a subsidy that he/she believes appropriate may appeal the plan's determination to the Department of Labor for private plans or to the Department of Health and Human Services for public plans covered under the Public Health Services Act. The relevant agency must rule on the appeal within 15 business days. Individuals whose appeal is denied may sue under ERISA.

Does the ARRA subsidy apply to "voluntary" benefit plans where the employee pays 100% of the cost of the plan?

Under certain voluntary plans (such as dental and vision, for example) employees pay 100% of the premium. However, to the extent that such programs are subject to COBRA continuation, they would be eligible for the subsidy. Employers have complained that they should not be paying a subsidy for a program that was voluntary, but ARRA does not exempt these plans. Further, since

employers will obtain a refund of the subsidy through their payroll taxes, these programs are being funded by the federal government, not the employer.

If, as the result of an involuntary termination that occurred during the coverage under a health plan that is not subject to the COBRA continuation coverage requirements (as defined under ARRA) and the individual is offered and elects continuation coverage provided voluntarily by an employer, is the premium reduction applicable and the related payroll tax credit for the employer (or other entity) available with respect to the continuation health coverage?

No. In order for the COBRA continuation coverage premium reduction and the related payroll tax credit to apply, the plan must be subject to the COBRA continuation coverage requirements as defined in ARRA.

How will we know who is eligible for the subsidy?

Eligibility is in virtually all cases determined by the plan sponsor. We will require the plan sponsor or employer to let us know which of its terminated members is subsidy-eligible. This will mainly be through designating that person as "involuntarily terminated." We will not attempt to determine this status on our own. If a person is not designated as such by the employer, we will not apply the subsidy when we are doing the COBRA billing.

Do we have to determine the income of the subsidy recipient?

The subsidy is only available to otherwise eligible persons who meet certain income thresholds. However, that is not a concern of either the employer or the COBRA administrator; the eligible person is responsible for determining the taxable effect of the subsidy. If a person's modified adjusted gross income (MAGI) makes him ineligible for the subsidy, the subsidy must be added to his tax liability. This would occur in the next year after the subsidy has been received. For example a person may be close the income threshold in 2009 but, being laid off, will not know exactly how much he will make in 2009. If, when doing his taxes in 2010, he finds out that his MAGI excludes him from eligibility, he will add the subsidy amount to his tax due. A person who knows that his MAGI will be too high to qualify for the subsidy may inform the subsidy payer of that fact and the payer will not include that person as subsidy eligible.

Will late-electing persons be subject to pre-existing condition exclusions?

The Act protects late-electing persons (those who were previously eligible for COBRA under the terms of the Act on or after September 1, 2008 but did not elect COBRA) by not counting any period of non-coverage between September 1, 2008 and February 29, 2009 as a lapse in coverage for determining the HIPAA 63-day gap in coverage rule (which would allow the imposition of a pre-existing condition exclusion).

If a member is a late-electing COBRA beneficiary as allowed by the Act – will we need to make sure their certificate of creditable coverage is revised to show no break in service?

To the best of our knowledge, there is no need to revise a certificate of creditable coverage. The Act protects late-electing persons (those who were previously eligible for COBRA under the terms of the Act on or after September 1, 2008 but did not elect COBRA) by not counting any period of non-coverage between September 1, 2008 and February 29, 2009 as a lapse in coverage for determining the HIPAA 63-day gap in coverage rule (which would allow the imposition of a pre-existing condition exclusion).

If spouse of COBRA participant is now enrolled under his or her own group health plan, does that mean that the COBRA participant is not qualified for the subsidy any longer because another option is available to them?

Correct, an individual is only eligible for the subsidy if they have no other health care option available to them including Medicare/Medicaid.

The Act indicates it applies to Involuntary termination of employment between 09/01/2008 and 12/31/2009 will qualify as eligible. What if the employment was terminated after 01/01/2010 are those members eligible? What if the termination was August 31, 2008?

No, individuals terminated before 9/1/08 or after 12/31/09 do not qualify.

The legislation covers only those individuals who were involuntarily terminated between 9/1/2008 - 12/31/2009. However, individuals will remain eligible for COBRA Coverage **without the subsidy**.

How will the employer know if the beneficiary becomes eligible for other coverage?

The beneficiary must notify the employer in writing if they become eligible for coverage under a major medical group health plan or Medicare and is subject to significant penalties (110% of the subsidy amount) for failing to do so.

Does the subsidy apply to multiemployer group health plans or to the insurer providing coverage under an insured plan?

The responsibility to pay the 65% subsidy depends on the type of continuation coverage:

- In the case of a multiemployer group health plan the subsidy is paid by the plan.
- In the case of a group health plan subject to the federal COBRA requirements, the subsidy is paid by the employer.
- In the case of continuation coverage offered pursuant to state requirements, the subsidy is paid by the insurance carrier.

Will the spreadsheets be pre-populated so employers just need to identify Involuntary terms?

The spreadsheets supporting the UHCBS COBRA will be pre-populated with all Qualifying Events that occurred from 9/1/08 to date to ease the process of identifying involuntary terminated employees.

What would the effective date be for 2nd chance AEIs?

The subsidy is available beginning 3/1/2009 for all monthly billed plans for all others the effective date is the first premium period beginning on or after 2/17/2009. For example, a plan that bills on February 15th would be effective on the next billing period date, March 15th.

If dependents were not active on the member's policy prior to Stimulus Special Enrollment, can they be added?

To be eligible for Special Enrollment options under ARRA, the individual must be eligible for COBRA. To be eligible for COBRA, the dependent must have been on the member's policy the day before the Qualifying Event. The COBRA laws remain in effect on handling

of available options for qualified beneficiaries. In this case, the individual is only eligible for the level of coverage as of the date of the Qualifying Event.

If a member elected COBRA for 02/01/2009 can they now waive that and start 03/01/2009 under the subsidy?

If an individual elected COBRA coverage to start on 2/1/09, the subsidy credit of 65% would begin with their 3/1/09 coverage period (assuming they are assistance eligible). They will get a notice telling them of the credit and any overpayment that may have occurred in March or April will be applied to future premiums.

If an assistance-eligible individual is already paying for COBRA for medical, but declined for dental, would that person be subject to the extended election period for the dental benefits not originally elected?

The individual would be eligible for a second change coverage election for all COBRA eligible plans during the extended election period.

If a former employee had family coverage, is the 65/35% on the entire premium or just the employee rate? If a former employee only had employee coverage, this does not allow him to now add dependents right?

The subsidy credit will apply to the full premium - including premium for family coverage. The employee cannot change his coverage to an extended tier during the special election period, but would be eligible for this during open enrollment periods.

If COBRA would have started 10-1 but former employee isn't electing until 3-1 due to ARRA does the 18 month COBRA period go back to 10-1 or does the 18 month start 3-1 with 9 month being subsidized?

The COBRA coverage period starts as of the date of the qualifying event (10/1 in this example). The nine month subsidy would begin on 3/1/09 and run through 11/30/09.

If an employee is terminated in September and the plan renews in January will the employee have to pay the Cobra rate that was active when he was terminated or the renewal Cobra rate?

The individual would be required to **pay current rates** for COBRA.

How are the groups supposed to know if other coverage is available and therefore the individual is no longer be eligible for the subsidy?

The employer is not responsible for obtaining this information and will be held harmless if the subsidy is provided erroneously. There is a significant penalty to participants who do not self-report the availability of other coverage options.

For means testing, what period of time should be used to determine the individual's income?

The individual will file the subsidy on their individual income taxes. The employer is not responsible for determining the individual's income.

If an employer was going through job elimination and individuals were eligible for early retirement under which they receive medical coverage, however do not receive dental or vision would they be eligible for the ARRA subsidy as an involuntary termination?

Yes, the individual would be eligible for COBRA and the ARRA Subsidy for the Dental and Vision portion of the benefit.

If an employer does not remove an employee who was termed prior to Sept. 1, 2009 and caught the error in November, will that individual be eligible for the subsidy?

No, the ARRA specifies the date of termination needing to be Sept. 1, 2008 - December 31, 2009

If an employee is terminated due to failure of a drug test would they be eligible to receive the subsidy?

If an individual is otherwise eligible for COBRA coverage and was terminated involuntarily they would be eligible to receive the subsidy under ARRA.

If a person goes on leave of absence 12/1 for 3 months and does not come back and applies for continuation coverage on 3/1 at the end of the leave of absence are they eligible for the subsidy?

It depends on whether this is involuntary termination at that point. If this is result of an employer adverse action (downsizing or similar) it could be involuntary.

If someone elects COBRA under the 35% premium, and decides to end it when the premium increases to 102%, would they be able to go on their spouses UnitedHealthcare plan under special enrollment rights, after the 9 month period? Or only after the 18 month period?

The individual would be ineligible for the subsidy if they are eligible for another group health plan including Medicare/Medicaid.

Does the ARRA apply to firms who furlough or reduce the work hours below 30 hours per week?

According to DOL furloughs are covered.

However, employees with reduced work hours are not covered, since the person is still employed.

What if a person was involuntarily terminated 10/1/08 under Federal COBRA and the group becomes State COBRA eligible 1/1/09? Is this person switched to State COBRA and the 65% subsidy is then paid by the carrier 3/1/09?

No. If an employer that is already subject to COBRA experiences a decrease in it's workforce to below 20 on a typical business day, COBRA will cease to apply to that employer in the following calendar year. However, COBRA will continue to apply to that employer with respect to all QEs that occurred during the calendar year in which the decrease took place. So, the individual will still receive continuation coverage pursuant to federal COBRA for the remainder of their COBRA period.

Are dependents taken off the plan due to divorce still eligible for the COBRA subsidy?

No, the only qualifying event is involuntary termination of employment.

Are the income requirements based on '08 income?

The employer does not have to worry about eligibility threshold based on income. The 2009 income will be the basis for eligibility and the employee who exceeds limits would pay back subsidy as tax in 2010.

If a person is getting the subsidy and subsequently has other group coverage become available to them, but that coverage has a 90 day waiting period (or other waiting period), when does the subsidy end?

The subsidy ends at the end of the 90 days. This was clarified by DOL.

PLANS (CHURCH, MEDICAL, HRA...)

Is an individual health plan considered other coverage? If the member enrolled in an individual plan does that make them void from the subsidy?

The ARRA legislation specifies it must be a group health plan.

Is this legislation applicable to religious organizations?

Yes, to the extent that a church plan is defined as a group medical plan, it would be subject to the provisions of ARRA.

Are Church Plans who offer a benefit continuation benefit (like COBRA, but not technically COBRA: i.e. the client extends benefits at a rate of one month for each year of service at termination) subject to the subsidy requirements of ARRA?

No. A voluntary plan does not qualify. In order for the COBRA continuation coverage premium reduction and the related payroll tax credit to apply, the plan must be subject to the COBRA continuation coverage requirements as defined in ARRA. However, if the church plan is subject to state continuation requirements, it would qualify for the subsidy the same as other similarly-covered plans.

If a group only has one medical plan currently, will we need to open another plan option if a COBRA member demands another option?

No, the ARRA allows the employer to offer COBRA beneficiaries an option for coverage that has the same or lower cost if one is offered to all employees.

If an employer offers voluntary dental where the employee pays 100%, what portion of the premium is an AEI responsible for?

Assuming due to involuntary term, COBRA participant pays 35% of the premium.

If the plan is a non-COBRA small group plan, UnitedHealthcare pays 65%; if the plan is a federal COBRA plan, the employer pays.

If dental is included in ARRA, can the former employee take dental only?

Former employee may take any combination that is ordinarily permitted under the plan.

Are individuals who have a Health Reimbursement Arrangement (HRA) eligible for the premium subsidy?

Yes. An HRA is a group health plan that is subject to COBRA.

What amount is the subsidy based on for the HRA?

The subsidy is based on the actual amount that the employer is charging the eligible person for COBRA, not the amount of the funds in the HRA. This amount is the cost to the plan of providing the benefit for similarly situated active employees who have not experienced a qualifying event.

NOTIFICATION

How will eligible individuals be notified of their right to the subsidy?

Under the Act employers (or issuers of group health plans under most state continuation plans) must provide modified election notices or provide separate supplemental notices to all persons who became entitled to elect COBRA continuation coverage during the period beginning on September 1, 2008 and ending on December 31, 2009.

When will the notices be provided?

By April 18, 2009, notices are required to be sent to any Assistance Eligible Individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who:

1. Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and
2. Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

Notice shall be provided "as soon as possible" to (1) all qualified beneficiaries, who experienced a qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event, AND who either have not yet been provided an election notice or who were provided an election notice on or after February 17, 2009 that did not include the additional information required by ARRA, and (2) Individuals who experienced a qualifying event

during on or after September 1, 2008, have already elected COBRA coverage, and still have it.

The Act does not affect the timing of notices sent to individuals who become qualified beneficiaries on or after the date of enactment.

How do I know if my small group client is part of the 4000 or 5000 cobra groups you are notifying?

A listing of UnitedHealthcare Benefit Services customers will be posted on the Healthcare reform site.

If a group uses another TPA whose responsibility is the notification, Employer, UHC, TPA?

For those who use another TPA for their COBRA processing, it would ultimately be the responsibility of the employer. The employer may designate that responsibility to a TPA instead of using us. If the employer chose to leverage an outside TPA (delegating that responsibility to the TPA) we (UHC) would not be responsible for the notifications.

Will UHCBS be sending notifications out to those who are eligible?

Yes, UHCBS will be sending notifications out to all individuals who experienced a Qualifying Event between Sept. 1, 2008 and December 31, 2009 and who have not yet received an election form. These will be going out in April.

Will other UnitedHealthcare platforms that administer COBRA be sending notifications out to those who are eligible?

Yes, all UnitedHealthcare businesses that administer COBRA will be sending notifications out to all individuals who experienced a Qualifying event between Sept. 1, 2008 and December 31, 2009 and who have not yet received an election form. These will be going out in April.

Will the notices sent to terminated employees include information on how to appeal the decision?

Yes, the ARRA Act requires that the right to appeal be included with the notification to non-eligible individuals.

SUBSIDY

What amount is the subsidy based on and what is the beneficiary charged?

Yes, all UnitedHealthcare businesses that administer

The subsidy is based on the actual amount that the employer is charging the eligible person for COBRA. This could be the full 102% of the plan cost allowed under COBRA in which case the subsidy would be 65% of that amount. For employers who subsidize COBRA coverage, the amount subject to the subsidy is the actual amount charged to the eligible person. For example, if the gross plan cost is \$1000 per month but the employer is only charging the eligible person \$500 per month, the subsidy is based on the \$500 (that is, the eligible person pays \$175 and the subsidy amount is \$325).

When does the subsidy end?

The subsidy is effective for 9 months for COBRA beneficiaries who become eligible March 1, 2009 or through December 31, 2009 (including late-enrollers from September 1, 2008 on who will initially become eligible on March 1, 2009). Therefore the maximum extent of the subsidy for a person becoming eligible on December 1, 2009 would be through August 31, 2010.

The subsidy will otherwise end if the assistance-eligible person becomes eligible for coverage under a group health plan or becomes eligible for benefits under Medicare.

If the COBRA coverage ends for any reason listed under the COBRA statutory provisions (e.g., continuation period ends by duration, coverage ends due to failure on the part of the assistance-eligible person to pay her share of the premium) the subsidy will also end.

What happens if an employer cannot establish the subsidy program by March 1?

Due to the close effective date, many employers will not be able to transition to the subsidy process by March 1 and subsidy-eligible persons may continue paying the full COBRA premium for a period of time. The Act contemplates that subsidy amounts that are applicable may not be implemented in the first two months of the program. In that case, the subsequent premiums for the subsidy-eligible persons may be provided with a refund of the overpayment or receive a credit on one or more subsequent premium statements equal to the accumulated overpayment. The method of refund is at the discretion of the entity to whom such payment is payable as long as the credit can be paid out over less than a 180 day period. The Act does not contemplate that employers will go more than two months in not applying the subsidy.

How will we handle the subsidy on a COBRA-eligible fully insured case?

The Act puts the burden for paying the subsidy on the employer for most COBRA-covered plans. Where we are collecting the COBRA premium on behalf of the employer, we will invoice the subsidy-eligible person (as designated by the employer) the appropriate 35% amount. We will, however, collect the balance from the employer through billing the employer the entire premium due under the policy. The employer will then be able to collect the reimbursement of the subsidy through its own payroll tax offsets. In no event will we front the subsidy funds on any case where we are not the subsidy-eligible entity.

How will we handle the subsidy on a self-funded case?

Similar to an insured case, if we are collecting the COBRA premium on behalf of the employer, we will invoice the subsidy-eligible person (as designated by the employer) the appropriate 35% amount. The employer will then be responsible for collecting the reimbursement for the 65% through its own payroll tax offsets.

When is UnitedHealthcare responsible for the subsidy?

A carrier such as UnitedHealthcare is responsible for paying the subsidy and seeking its own reimbursement from its payroll tax offsets only for insured plans that are not covered by COBRA but are covered by substantially similar state continuation coverage. This means that UnitedHealthcare will be responsible mainly for small groups (below the COBRA 20 employee threshold) and any other insured groups that are not covered by COBRA but are covered by state continuation laws (such as church plans). In this case UnitedHealthcare will have to bill eligible subsidy recipients the 35% and accept a premium shortfall of 65% that it will recover through the payroll tax offset. The date that the credit may be taken is no earlier than the date that the reduced payment was received from the eligible participant.

Is the member's responsibility of 35% of the entire premium including family members, or does the member have to pay full price for dependents?

The Subsidy applies to the amount the employer charges for COBRA.

What is the special enrollment provision?

The Act allows (but does not require) an employer to make available to subsidy-eligible individuals a lower cost plan option within 90 days of the time the persons becomes eligible for COBRA. In order to qualify, the other plan must have a premium that does not exceed the premium in the plan in which the individual is enrolled at the time the qualifying event occurred and that plan must be offered to active employees of the employer at the time at which the election is made.

Will we make any changes in our COCs or SPDs to reflect the subsidy arrangement?

Since the subsidy is presumably a limited-time event, we are not recommending any changes to COCs or SPDs. Instead, we will encourage plan sponsors to do a one-time mailing of the new prescribed notice to all of their employees. That notice will cover the particulars of the subsidy program. If the subsidy program is re-authorized for years after 2009, we will consider the appropriateness of specific changes to our plan documents.

Do we track COBRA members' original effective date if the employer plan migrated from PacifiCare to UHC within this Act's timeframe (For example, if a group migrated their PPO plan on 1/1/09 from PacifiCare to UHC - either UNET or PRIME)? In other words, will we be able to identify these members to send out notification?

We do track effective dates within the COBRA management system. This is maintained independent of the carriers system for those customers who use UHCBS for COBRA administration.

For participants who dropped only part of their coverage(i.e. went from ppt + child to ppt only), do they get this new election period to add back that coverage?

Yes.

SEVERANCE

How Does the ARRA subsidy affect employer severance plans?

This depends upon how the severance plan is structured. An employer may elect to have the severance plan health benefit run prior to COBRA under what is known as a 4980B(f)(8) election. This has to be incorporated

into the employer's plan documents and the severance agreement. In that case COBRA will begin after the severance is finished. Otherwise COBRA will run concurrently with a severance plan. So the ARRA subsidy impacts will vary depending upon the nature of the plan.

- 1. Severance runs prior to COBRA** – Subsidy begins only when COBRA begins and continues for 9 months thereafter or until any other terminating event.

Example: Severance extends for 3 months. Health benefit costs \$1000. Employer pays 100% of medical benefit. No subsidy for those 3 months. After 3 months COBRA begins and employer pays nothing. Employee pays \$350 (35%), employer pays \$650 (65%) for nine months (assuming no early termination event).

- 2. Severance runs concurrent with COBRA** – Subsidy applies immediately to the severance payments made by the participant.

Example: Severance extends for 3 months. Health benefit costs \$1000. During the severance period the plan charges the employee \$500 for the coverage. Since the subsidy applies from day one, for the first three months the employee pays 35% of the \$500 (\$175) and the employer pays 65% (\$325). After three months and the end of the severance agreement, the cost of the health coverage goes up to \$1000. So the premium to the employee at this point is \$1000 and for the next six months the employees pays \$350 and the employer pays \$650.

STATE CONTINUATION

Does this law affect State Continuation?

The Act impacts continuation coverage offered under state continuation to the extent such requirements are "comparable" to the federal COBRA standards.

How will we determine which state continuation laws are "comparable" to COBRA?

The Conference Committee report states that state continuation laws will be comparable to COBRA and eligible for the subsidy if the law requires continuation of substantially similar coverage as was provided under the group health plan and at a monthly cost that is based on a specified percentage of the group health plan's cost of providing such coverage.

How can we meet the member notification requirements by April 18 when states are still outlining what they want to do and it is only a couple of weeks away?

First of all, there is no 4/18 deadline for the state notices unless the state directs us to use that date. We are waiting for directions from the states on this. Some states (e.g., CT and AR) have already developed their own special forms that we have been requested to send to EMPLOYERS, not employees. Other states, NJ, e.g., are using the 4/18 date. So since this may vary from state to state (especially since many have legislation that would authorize the special late enrollment for persons back to 9/1/08) we will be sending notices as directed and most will not be out before 4/18 (which is the date for the second chance notices for federal COBRA).

For Mini COBRA or State Continuation - If the length of time to be covered is only 6 months, will this change with the new Stimulus since member is eligible for 9 months of subsidy?

The ARRA act does not change the duration of continuation on a state continuation plan. If the plan is six months, it will remain at six unless the state continuation laws are changed.

If an employee is on FI Mini-cobra, how does the employer track the premiums as mini-cobra participants are given their own policy #? Is Mini-cobra considered "comparable" to Fed Cobra?

Florida state continuation is considered comparable to COBRA for the purposes of the ARRA act. Specifics on tracking and handling are forthcoming as state by state understanding is defined.

Will the State Continuation AEI's not be on the Employer's regular bill?

Specifics of billing adjustments required for handling of AEI's in State Continuation will be forthcoming. The process will include some notification and billing to the employer (may be reporting versus billing) dependent upon process and state requirements.

Are employers who are located in States such as Massachusetts who have "mini" COBRA laws required to comply with this law?

If the plan in that state is covered by the state continuation law there, the answer is yes.

How does an employer (under 20 to whom State Continuation Laws apply) get a refund for the 65% of premium they have already paid for March and possibly April? Will the UHC invoices be adjusted for future premium to reflect only 35% due on ex-employees?

UnitedHealthcare will be responsible for the subsidy and will obtain the refund. We will adjust premium accounts as necessary to reflect the subsidy amounts.

I understand Wisconsin law does not allow this to be retroactively offered, only newly eligible after 3/1 can participate. Is this correct?

DOL states that ARRA does not modify state plans. States may amend their plans to do a retro enrollment, but default is NO, no retro enrollment. At present Wisconsin does not have retro enrollment.

Does ARRA allow for 2nd chance election relative to state continuation?

No. But states may amend their laws to add this.

North Carolina DOI indicates that they will not offer the second chance for state continuation; what do the employers need to do in terms of notification to individuals who experienced a qualifying event?

In situations where there is no second change, we will look to the state insurance department to provide guidance on who sends notifications out to individuals. The US Department of Labor has stated that the issuer send the notice.

How does the subsidy work for both COBRA and State continuation if an employer goes out of business?

If an employer goes out of business and there is no group health plan, then there is no COBRA coverage or Subsidy. There may be special state continuation rules that come in to play in that event, and we are reviewing those provisions and their interaction with ARRA.

A group was under COBRA in 2008 and is now under State Continuation for 2009, and an employee elected family coverage for November 2008. Due to the high rates the employee now only covers the spouse. Would the employee be eligible for the subsidy?

Yes. The employee would be eligible for the subsidy if

the state continuation law is comparable to COBRA and as long as he or she is identified as an involuntarily terminated participant.

If a Florida employer lays off employees in North Carolina where state continuation is mandatory and premium must be paid to the employer, who is responsible for the notification?

The issuer of the group policy would be responsible for the notifications.

ADMINISTRATION

For small groups that do not qualify for COBRA and for whom UHC will be collecting the subsidy on their behalf, will UHC provide the notices to these employees or is that the employer's responsibility? I know we have a detailed list of what must be provided in order for UHC to file for the subsidy on their behalf, but it doesn't say whether UHC provides the notices or not to employees.

For key accounts subject to COBRA that do not utilize UHCBenefit Services or UHC COBRA, the employer will need to handle the notifications, the subsidy credits and supporting reporting. As such, the changes for COBRA participants on UHC Medical, life, DI or any COBRA eligible plan would not change from current handling. The changes are with the employer or their third party administrator.

It is difficult to provide a response for small business as it is not as easy to understand, communicate or provide assurance as parts of it are still pending.

For small business that does not use UHCBS:

- If they are COBRA eligible, the responsibility is on the employer. The employer is responsible for the subsidy credit. We have provided notification templates in some cases in the past for UHC Medical clients. At this time, we are not sure when we will have them for the COBRA ARRA. While, we are not required to provide this, we are looking into it.
- For State Continuation clients the issuer is primarily responsible unless the state provides otherwise in its guidance. In some cases, as the "issuer", we will need to provide notifications. In addition, as the insurance carrier is responsible for the subsidy credit, it will change the billing process as we deal with 2-19 medical clients. Meetings are underway to better define this process and our actions to support it.

Who exactly is getting the notices - all of our groups or just the ones we administer?

UnitedHealthcare will send notices for those clients for whom we do the COBRA administration. Once we collect the determination of eligibility based on the designation as Involuntary or not, we will begin to send out member notifications (no later than April 18).

The primary entities involved in the notification piece are UHCBS, UMR and ARC.

The groups related to these above entities have already received notices and we are asking for lists of 'involuntary vs. voluntary terminations'. This process will then determine which letter is sent out to the member.

Do employers have to request the file of individuals or is the administrator/UHC BS automatically providing it to groups, if so when?

For groups that are administered through UnitedHealthcare Benefit Services COBRA the spreadsheets will automatically be sent out. For all customers that have termed their coverage from UnitedHealthcare Benefit Services we will provide a spreadsheet of individuals who have had a qualifying event between September 1, 2008 through the termination date, upon request.

If a group only has one medical plan currently, will we need to open another plan option if a Cobra member demands another option?

No, the ARRA allows employers to offer an option for a lesser coverage but that plan has to be one offered to all employees.

For Key Accounts, will the spreadsheet be pre-populated so that employers only have to indicate who were involuntarily termed? Or will the employer have to populate the entire spreadsheet?

The spreadsheets for Key/National and Public Sector accounts will be pre-populated; the Employer will only need to indicate involuntary/voluntary terminations.

For ASO customers will the invoices be for the 35% for assistance eligible individuals?

All individuals who are Assistance Eligible will receive updated invoices or coupons that will outline the subsidy and bill for a net 35% of premiums - this will occur independent of funding method.

What is UnitedHealthcare doing with regard to plan document amendments for the change in special enrollment rights for individuals who lose eligibility under Medicaid or Chips. This is related to the new laws passed by Obama--, one of them being the new Cobra law and the other being CHIPRA. According to CHIPRA (Children's Health Insurance Program Reauthorization Act of 2009) loss of coverage under Medicaid or Chips is a qualifying event to get on the group plan. Texas is not doing this, but for those states offering a premium assistance subsidy, that is also a qualifying event to get off of Chips and get on the group plan.

At this time we will not be amending our plan documents for the COBRA subsidy provisions, however, this is still under review. We are proposing plan document updates for the CHIPRA provisions.

Are the processes the same for the PHS (UMR, Fiserv, Oxford etc) business?

This is being analyzed by the cross business, multi-functional team. While the basic requirements of the law are the same for all business, the execution requirements may vary slightly.

If we are the COBRA administrator, will we do the member notification or will it be the employer's responsibility to handle the notification?

For COBRA-covered cases UnitedHealthcare Benefit Services will notify employers and participants. However, if an employer does not identify the individuals as involuntary terms, the responsibility will remain at the Employer level.

How does this affect Third Party Administrator's that administrate COBRA - specifically UnitedHealthcare Benefit Services. Do they write off on their taxes for the difference in what the member pays and what TPA is responsible for?

A third party administrator will not be responsible for the subsidy credit in any circumstances. For COBRA eligible clients, the employer will pay the difference to the insurance company and claim credit on their payroll taxes. For State Continuation clients, the health insurance carrier will make up the 65% difference and claim the credit on their payroll taxes.

How often will the employer group be reimbursed? If they are to make a claim on their payroll taxes how often is that done; quarterly, annually or bi-weekly?

Most employers will file their payroll taxes on a quarterly basis with Form 941. It is possible that employers will be able to reduce payroll withholding deposits otherwise required to be made with the IRS in some circumstances.

For the option that employers have offering same or lower cost plan: Is this only for groups offering more than 1 plan to actives? How does UnitedHealthcare track if an employee does opt for a lower cost plan and this results in changing systems (i.e., moving from UHC plan to PacifiCare plan or vice versa)?

The coverage option to offer lower cost plans to AEI's is available for only those who have more than one plan. The specific operational mechanics on tracking, reporting and system impact will need to be addressed on a case by case basis dependent upon platforms impacted.

How will UnitedHealthcare know when an employee terminates on a state continuation group?

Notification of involuntary termination for both COBRA and State Continuation must come from the employer. For UHCBS, this process is an entry within our UHC Services website notifying us of a qualifying event and the type of event. For notification on other platforms, the process being used today will need to be adapted to include the involuntary termination communication code.

Which UnitedHealthcare COBRA admin vendors will be reaching out to employers? And will Processworks (COBRA vendor owned by UnitedHealthcare) reach out to employers as well? We have a large key account with Processworks and we don't know who to call there.

UnitedHealthcare Benefit Services and Processworks will be reaching out to impacted clients with instructions on employer feedback on involuntary terminated employees. UnitedHealthcare Benefit Services and ProcessWorks are on the same platform and managed through the same process.

What are we doing to clarify the definition of involuntary termination and how it relates to furloughed employees where the employment relationship is not terminated?

The DOL issued further guidance on 3/24 which stated that furloughed employees would be considered involuntary terminated employees for the COBRA ARRA Act.

Do employers have to request the file of individuals or is the administrator/UnitedHealthcare Benefit Services automatically providing it to groups, and if so, when?

For groups that are administered through UnitedHealthcare Benefit Services COBRA the spreadsheets will automatically be sent out. For all customers that have termed their coverage from UnitedHealthcare Benefit Services we will provide a spreadsheet of individuals who have had a qualifying event from Sept. 1, 2008 through the termination date, upon request.

How will employers who use either tape or eservices submit eligibility? Will your systems accept them?

The electronic file submission to UnitedHealthcare Benefit Services will be modified to accept "AR" as the involuntary termination code.

Will the spreadsheet that UnitedHealthcare Benefit Services will send out be pre-populated so that employers only have to indicate involuntary terms? Or will the employer have to populate the entire spread sheet?

The spreadsheets for Key/National and Public Sector accounts will be pre-populated; the employer will only need to indicate involuntary/voluntary terminations.

When an individual is offered the second chance election will they be able to begin their coverage on a date other than March 1, 2009?

For the second chance elections, individuals will almost always have a March 1, 2009 effective date. An individual may not choose an alternate start date.

What is an employer responsible for if UnitedHealthcare is not the COBRA Administrator?

A COBRA-covered employer is responsible for the notification to individuals who have experienced a qualifying event from September 1, 2008 through December 31, 2009. If, however, the employer has hired another TPA to administer their COBRA benefits that TPA would likely be responsible for the notification.

Who is responsible for the notification of individuals who are covered under State Continuation?

The insurer is responsible for the notification under State Continuation unless the state directs otherwise.

If UnitedHealthcare Benefit Services is the COBRA administrator, where do employers enter the necessary information regarding involuntary and voluntary terminations?

Employers should log into www.uhcservices.com and follow the onscreen instructions to either upload a file or review their involuntary/voluntary listing online. If there are additional individuals that do not appear on the report, they should be entered online as a new Qualifying Event.

If an employer transferred their COBRA administrator on January 1, 2009 to UnitedHealthcare Benefit Services, do they need to contact the previous COBRA Administrator to notify individuals termed between Sept. 1 and December 31, 2008?

UnitedHealthcare Benefit Services will work with each employer to identify those individuals and will send out all notifications to those identified individuals.

If an employer has a single plan on March 1 and offers a new plan effective April 1, can the employer decide which plan to offer the participant?

The individual would roll to the current plan. Standard COBRA Rules would apply. However, if the new plan is the same or lower cost, the employer may offer the new plan to qualified beneficiaries as a Special Enrollment option under ARRA.

As open enrollment occurs during the subsidy, can a participant add dependents and will they qualify for the subsidy premium?

Yes, as long as the employee was on COBRA, was subsidy eligible and during enrollment was entitled to add family members, they would be eligible.

If an employee does not elect COBRA but their dependent does, would the dependent then come on as an individual and at an individual (employee only) rate? What if there is more than one dependent?

Typically if there is only one child covered it is the participant only rate. If there is more than one child, it would be charged as participant + child(ren)

Currently, in groups under 100 in the state of Alabama, UnitedHealthcare does not administer COBRA billing for the employer. Is this going to change and if so, is there an extra charge to the client?

If a client is interested in having UnitedHealthcare Benefit Services administer COBRA for them, have them contact a member of their account management team so they can provide a quote.

Will elections from Qualified Beneficiaries who claim to be involuntarily terminated undergo a verification process with employers? If so, what is the verification process? If not, will the Qualified Beneficiaries' election be sufficient subject to the employer's objection?

The identifying qualification of the involuntary termination is determined by the employer not the ex-employee.

What is a fair period of time to give employees to complete and return the election form?

According the ARRA legislation the participant has 60 days to return the election form.

If an employer received the UnitedHealthcare Benefit Services email to submit the spreadsheet with all involuntary terms, what responsibilities with respect to taxes is required on behalf of the employer?

Once the participants have been identified by the employer the participants will be notified by UnitedHealthcare Benefit Services. The employer will have the responsibility to report this on their taxes once a quarter on the form 941 payroll reporting form as required by the Internal Revenue Service.

If dependents were not active on the member's policy prior to Stimulus Special Enrollment, can they be added?

To be eligible for Special Enrollment options under ARRA, the individual must be eligible for COBRA. To be eligible for COBRA, the dependent must have been on the member's policy the day before the Qualifying Event. The COBRA laws remain in effect on handling of available options for qualified beneficiaries. In this case, the individual is only eligible for the level of coverage as of the date of the qualifying event.

COSTS – RATES AND PREMIUMS

From a sales view can I assume the COBRA rates will go up?

COBRA rates will remain as per our existing contracts. For most key and national accounts, the service is priced at a per activity fee (a fee for each QEN sent out, a fee for each participant enrolled and for each month of billing and collection, etc.) In these situations, the rates will remain the same.

However, it should be noted that the volume of activities will certainly go up with the ARRA second chance requirements and general notifications and if additional individuals choose to utilize COBRA with the subsidized rates.

For the Small Business bundled offering, there will be no additional costs.

Will a group be able to delay premium payments for COBRA participants until I receive the credit from the government?

No.

Will premiums need to be paid in full as they are today and if not paid in full will the policy be terminated?

Premiums must be paid in full until we receive notification of the individual as an involuntary term and the participant 'elects' the subsidy.

Is the member's responsibility of 35% of the entire premium including family members, or does the member have to pay full price for dependents?

The Subsidy applies to the amount the employer charges for COBRA.

Once the 9 months subsidy is exhausted, can the member continue on COBRA paying full premium?

Yes. An individual may continue on COBRA for the duration of their eligibility period (18 months in most cases) and pay the full COBRA premium.

If I have an employee currently on COBRA when does he start paying at the 35% rate?

We are recommending the participant pay their full premium until they receive their invoice with the 35%. We will make the adjustment and apply the additional payment to the following month's invoices. However, we are obliged to accept the 35% if the participant has been certified by the employer as an Assistance Eligible Individual.

REPORTING

Will we be providing any reporting for customers who used us for Cobra but have since termed?

If requested by prior clients, we will be supportive in pulling a listing of qualifying events from 9/1/08 until termination date for them.

Reporting – who will be doing the reporting, how is it requested and what is the frequency?

Most reporting will be a compilation of reporting from the administrator of the COBRA (UHCBS in most situations) aligned with data collected and maintained by the employer. For the requirements re; payment collection, timing, amounts and for what participants, the COBRA administrator will fulfill this on a monthly basis.

What is the tax year that the income guidelines are based on?

The income guidelines will be based on the individual's income tax filings for the year. For 2009, the eligibility of a person under the guidelines might not be established until she files her 2009 tax return in 2010. Employers do not need to be concerned about the income guidelines unless an employee files a waiver for the subsidy with the employer.

Does the reporting have to be sent in to the government with the 941 form?

The majority of reporting requirements are not submitted with the Form 941 but, rather, are required to be maintained as supporting back-up for the tax credit taken.

On the 941 report do we need to track dependent and spouse Social Security Numbers?

No, the 941 Form requires only the subsidy amount and the number of participants to which it applies. The Social Security number of the employee is needed for the background information to be retained.

Who files the 941 under a self funded multi-employer plan with no employees?

The plan files the 941 and requests a refund on the form. IRS has said they will try to expedite the refund.

COMMUNICATION – TO EMPLOYERS, MEMBERS AND CHANNEL PARTNERS

Going forward, what are we doing from a system standpoint to communicate to our customers?

Employers are continuing to receive multiple communications from UnitedHealthcare:

- Broker/Employer and Consultant eUpdates
- Special Edition and targeted communications
- Webinars and recordings
- Postings of communications to employer and broker/consultant portals
- Pre notification and notification letters
- Member letters for those eligible and not eligible
- FAQ documents

Will we do both types of communications or just the second chance?

UnitedHealthcare will support communications to both those who are assistance eligible as well as those who are not. Again, we will do this for all accounts where we are the administrator for the COBRA process today.

Will there be any webcast trainings/educational seminars available to UnitedHealthcare brokers and employers regarding COBRA Stimulus?

Yes, we have a number of webcasts scheduled - please refer to the internal UnitedHealthcare Healthcare Reform microsite for up to date information.

EMPLOYER RESPONSIBILITIES

What effect does this have on stop loss coverage?

We are presently exploring the potential impact of the retroactive eligibility provisions for non-electors on our stop loss coverage. Whether this can be considered a “change in plan” that would allow us to adjust the premium is presently under review.

What do employers need to do?

In general, an employer will need to identify individuals eligible for COBRA on or after September 1, 2008 and provide notification to these individuals of their potential new election period and of the availability of the premium subsidy, and any other COBRA coverage options, if any.

Employers will need to perform and manage the subsidy cash handling process as it impacts their cash flow and payroll tax processes

How can the customer ensure compliance with the law?

Customers need to consult with their own legal counsel in order to determine what actions need to be taken to comply with the new law.

How will an employer file for the credit?

The subsidy may be offset from employee income tax withholding, employee FICA tax withholding or employer FICA tax obligations.

The Internal Revenue Service (IRS) has released a revised Form 941 and Instructions for reporting the amount of the premium subsidy that is taken as a payroll tax credit.

For those employers for whom United will file for the subsidy credit, what will UnitedHealthcare need from employers in order to file for the credit?

UnitedHealthcare will be responsible for filing the subsidy credit for non-COBRA small employers under comparable state continuation laws. The IRS has published questions and answers that detail what supporting documentation UnitedHealthcare will need to obtain from a non-COBRA employer in order to confirm that a particular individual was eligible for the credit. Regardless of who is administering the continuation plan (the employer, a third party or a UnitedHealthcare entity) we will need the following information:

- Information on the receipt, including dates and amounts, of each assistance eligible individual's 35% share of the premium;
- In the case of an insured plan, a copy of the invoice or other supporting statement from the continuation administrator (if not United) or the employer.
- In the case of a self-funded plan proof of the continuation premium amount and proof of the coverage provided to assistance eligible individuals;
- Attestation of the involuntary termination of the employee, including the date of the termination;

- Proof of each assistance eligible individual's eligibility for continuation coverage during the relevant time period and election of continuation coverage;
- Social security numbers of the covered employees, the amount of subsidy reimbursed with respect to each covered employee and, with respect to each covered employee, a designation as to whether the subsidy reimbursement is for coverage of one person or two or more people.
- Other documents necessary to verify the correct amount of reimbursement.

Is the first effective date of the subsidy 3/1/09? Will the effective date be any day of the month based on the response date or would it be first of following month?

The effective date of new coverage for Assistance Eligible Individuals and the corresponding subsidy will be March 1, 2009. There may be an isolated case where a client has their plan coverage set to terminate on date of event, then offers COBRA to begin on the day after event. However, this is extremely rare. The standard is for the coverage period to begin the first day of the month following event. This will drive the offer, and therefore the subsidy.

For the option that allows employers to offer a lower cost plan – is this only for groups offering more than 1 plan to actives? And, how can UnitedHealthcare track if the employee opts for a lower cost plan and it results in the employee plan changing systems (e.g. moving from UnitedHealth to PacifiCare plans or vice versa)?

Correct – the member can only switch to a lower cost plan if the employer has offered more than one plan.

For members who chose a plan that is lower cost, but on a different system, we will need to handle this manually. This will be a manual tracking and unique set-up for each case that chooses this option - and a difficult one when crossing platforms or systems. We have similar concerns when it crossed carriers. This is why we will need to manually work through each of these and why we are pretty strong in our recommendation not to choose this option.



Please note that the information contained herein is provided to readers for informational purposes only and you may not rely on this information as legal or any other advice. You should consult with your own legal counsel to ensure compliance with applicable law.