



CLIENT ACTION Bulletin

Employee Benefits

New COBRA and Other Requirements for Group Health Plans

SUMMARY

Nearly all employers that sponsor health benefit plans for their workers face new administrative challenges under two recently enacted laws. The \$787 billion “American Recovery and Reinvestment Act of 2009” (ARRA, signed on Feb. 17) will provide some recently and future unemployed workers temporary premium assistance to help pay the cost of health insurance premiums under the COBRA healthcare continuation coverage rules. And the recent “Children’s Health Insurance Program Reauthorization Act of 2009” (CHIPRA, P.L.111-3, signed on Feb. 4) adds a special enrollment period for workers and their dependents who gain or lose Medicaid/CHIP coverage by designating such gains or losses as a “qualifying event” that entitles the individuals to enroll in their employer’s plan.

In general, ARRA’s COBRA provisions are effective March 1, 2009; CHIPRA’s provisions are effective April 1, 2009.

DISCUSSION

Covered Group Health Plans

By amending ERISA, the tax code, and the Public Health Service Act (PHSA), both ARRA and CHIPRA affect nearly all employer-sponsored group health plans (insured and self-insured, and in the private and public sectors). For the COBRA provisions, notable exceptions to the requirement that employers offer temporary healthcare coverage to employees who lose coverage (generally due to employment termination or a reduction in work hours) are small employers (those with fewer than 20 employees) and churches. But the PHSA, which governs plans sponsored by state and local governments, allows states to extend the regulatory reach to plans with fewer than 20 employees.

Both ARRA and CHIPRA call for penalties of \$100 per day per beneficiary on employers (or the group health plan for multiemployer plans) for failures to comply with the new requirements.

ARRA’s COBRA Provisions

If an eligible individual elects COBRA healthcare continuation coverage, ARRA temporarily provides a 65% federal subsidy – to be credited against an employer’s wage withholdings and payroll taxes – for COBRA health insurance premiums for up to nine months for workers (and their families) who have been or are involuntarily terminated (but not for gross misconduct) from employment between Sept. 1, 2008, and Jan. 1, 2010. The subsidy terminates upon the individual becoming eligible for other coverage (e.g., another group health plan, an on-site clinic, Medicare). Following the subsidized period, the individual would remain eligible for unsubsidized coverage for up to nine months, for a total of 18 months of COBRA coverage that the pre-ARRA law requires. ARRA imposes an income threshold for eligibility: \$145,000 in modified adjusted gross income for single filers, and \$290,000 for joint filers, with a phase out beginning at \$125,000 and \$250,000, respectively.

Under ARRA’s provisions:

- Employers may allow affected individuals to change their coverage options to a lower-cost plan when electing COBRA coverage;
- Qualified individuals who were terminated from employment before ARRA’s Feb. 17, 2009, enactment date and who did not elect COBRA coverage at that time must be permitted to elect coverage within 60 days of being notified of the special election period (and the special election period will not extend the COBRA continuation coverage period beyond the original maximum period);
- The period from an individual’s employment termination to ARRA’s enactment date does not count towards the 63-day break-in-insurance coverage;

- Qualified individuals opting for the COBRA coverage must pay their 35% share of the COBRA premiums to the employer before the employer may be credited with the 65% subsidy;
- Plan sponsors must submit periodic reports to the IRS, documenting the involuntary unemployment of each employee covered by the subsidy, the amount of payroll taxes offset for the reporting period, and the estimated tax offsets for the following reporting period;
- Upon gaining other coverage during the subsidized period, the individual must notify the group health plan in writing or face penalties; and
- Plan sponsors must notify qualifying workers of the availability of the subsidy for COBRA premiums, along with other required information. (Model notices will be published within 30 days by the appropriate federal agencies.)

CHIPRA's Special Enrollment and Premium Assistance Provisions

CHIPRA requires a group health plan to allow individuals who were not covered by the plan to enroll when they become eligible for Medicaid/CHIP or when they become eligible for a premium subsidy from Medicaid/CHIP, regardless of whether such an event occurs during the plan's open enrollment period. The law requires the individual to request coverage within 60 days of eligibility for the employer's plan.

The law also permits states to offer a premium subsidy for qualified employer-sponsored coverage to all workers (or their dependents) who are Medicaid- or CHIP-eligible (if the employer charges 40% or more for dependent coverage). Group health plans in such states must inform employees about the availability of the federal assistance for employer-sponsored coverage, beginning with the first plan year after the Feb. 4, 2010, deadline for the Labor and Health and Human Services Departments to issue a model notice. In addition, CHIPRA requires an employer to disclose, upon a request by state agencies, sufficient information about the plan benefits to enable them to: determine whether providing the subsidy is more cost effective than to provide coverage under Medicaid/CHIP for an individual; or coordinate the Medicaid/CHIP benefits as a supplement to the employer-sponsored plan.

ACTION

Employers that sponsor health plans must act quickly to ensure compliance with the new laws. Administratively, plan sponsors must: identify terminated employees and notify them of the COBRA subsidy; notify all workers about the Medicaid/CHIP provisions; permit enrollment in the plans; set up or adapt payroll and other systems to ensure that affected employees and former employees have been contacted and that their appropriate share of health insurance premiums are paid; decide to receive direct payments from states or take the limited opt out available under CHIPRA; and be prepared to provide necessary reports to federal and state agencies with oversight authority. Plan documents and contracts with insurance companies or third-party administrators may have to be amended, and communications materials will have to be developed.

Both ARRA and CHIPRA also contain other provisions with implications for employer-sponsored plans, such as an expansion and extension of the Health Coverage Tax Credit for workers covered by the Trade Adjustment Assistance programs and an expansion of the eligibility requirements for coverage under Medicaid and/or CHIP. To the extent that individuals gaining coverage under an employer's plan are above-average users of healthcare services, overall plan costs could rise.

For additional information about the ARRA's or CHIPRA's provisions relating to employer-sponsored plans, please contact your Milliman consultant.