

Agent Insight

March 9, 2009

- **"Note that there is not a mandate of continuation coverage under Idaho state law, so only the FAQ provisions as they pertain to COBRA are relevant in Idaho."**

Regence employees have begun receiving questions from employers and members regarding the new COBRA subsidy and regulations. Please see below for brief responses to some of the more frequently asked questions. Some of this information is not yet complete as the Department of Labor and the IRS are still working on more specific information. But you may use these responses (from Regence's legal department) to respond to most calls until we get more information. The following is a list of thirteen most commonly asked questions. The highlighted questions (1, 6, 8, and 11) should help employers get started with their requirements. The more extensive FAQ from legal is also attached for more detailed information.

Please be aware that in answering these questions, we should not be providing interpretation of the new rules. If an employer or member has more specific questions, they should contact their own legal counsel, or wait until the DOL releases more information.

You may provide these thirteen Q&As, but not the attached full FAQ, to brokers or agents with the following disclaimer:

Official guidance on many details of the COBRA subsidy described herein has not been provided. These FAQs represent our best efforts at interpretation based on the information available at the time of creation and are not and should not be construed as legal advice or counsel. We reserve the right to make modifications as additional clarification and guidance becomes available.

1. Who is responsible to provide notices of COBRA rights? An employer remains responsible to provide COBRA notices, both at the time COBRA first applies to its plan or enrollee and upon the occurrence of a qualifying event. The new law requires changes to those notices to address the availability of the subsidy. In addition, the new law requires employers to provide an additional COBRA notice and notice to certain individuals who are currently on COBRA or a state continuation of coverage.

2. What are the changes to the current COBRA notices? The additional information that will have to be added to existing COBRA notices includes disclosure of (a) the availability of the subsidy, (b) the individual's obligation to provide written notice of eligibility for Medicare or other group health plan coverage (and penalty for failing to do so), (c) the one-time special election opportunity for certain individuals to elect COBRA, and (if applicable) the option of electing a less expensive alternative coverage option. Forms that are necessary to establish eligibility for the subsidy must be included, as well as the name, address, and phone number for the plan's contact person. The changes can be incorporated into the current COBRA notices or be a separate document. The Department of Labor is tasked with publishing a model notice by 19 March 2009.

3. Who must be provided the new COBRA notice? The additional COBRA notice must be sent to individuals who became qualified beneficiaries on or after September 1, 2008 but are not enrolled as of February 17, 2009. Note that the notice must go to all these individuals, whether or not their qualifying event was an involuntary termination. The notice must be provided by April 18, 2009.

4. What is the subject of the new COBRA notice? The new notice informs a recipient that a one-time special election opportunity to elect COBRA is available to him or her if he or she was involuntarily terminated from employment between September 1, 2008 and February 17, 2009. (There is not a corresponding special election opportunity for state continuations of coverage.) It also explains the availability of the 65% subsidy. The Department of Labor is tasked with publishing a model notice by 19 March 2009.

5. Which individuals who are currently on COBRA or a state continuation of coverage must be provided a new notice and what must it say? Those individuals who qualified for COBRA or a state continuation of coverage as a result of a qualifying event occurring on or after 1 September 2008 need to be provided a notice that it appears will primarily inform them of the availability of the subsidy beginning 1 March 2009. Once an employer has made the necessary changes to its COBRA notices in Q&A 2, above, its distribution of those notices will suffice for those who are provided it.

6. What can employers begin to do now? Employers may wish to contact their legal and/or benefits advisors, as we cannot provide them advice on these matters. Employers should begin immediately to identify those who had COBRA or state continuation qualifying events under their group health plans on or after 1 September 2008. They also should identify those employees whose employment was involuntarily terminated on or after 1 September 2008. Employers should consider updating and providing the required COBRA notices to past qualified beneficiaries, as well as future ones, even before model notices are published, or at least make preparations for these updates to be made and updated notices to be sent promptly after publication of the model notices. Employers should prepare a notice to current COBRA enrollees, informing them of the availability of the subsidy, and should consider whether they wish to return or credit premiums in the amount of the subsidy to these individuals who have paid full premium between 1 March and 18 April 2009. Employers also can begin to assess and modify their processes and systems for record keeping, notifications, reporting, and payroll tax administration with the new law in mind.

7. What can involuntarily terminated employees and their spouses and dependents expect? They can expect to get information about the subsidy and their associated rights from the former employer by 18 April 2009.

8. Where can I get more information? More information is available at: <http://www.dol.gov/ebsa/faqs/faq-consumer-cobra2.html>, <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>, <http://www.dol.gov/ebsa/COBRA.html>, and interspersed in the COBRA information at http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html. The DOL and IRS are working to provide additional guidance and regulations, so it is worthwhile to check their websites for additional information frequently. Many law firms and benefits consulting firms have posted explanations and summaries, as well, and employers and others may wish to review those.

9. When an employer, plan, or insurer has provided the subsidy and is eligible for reimbursement of the subsidy from the federal government, what information will need to be reported? The employer, plan, or insurer will take the amount of subsidy that it provided as a credit against the payroll taxes that it owes. Details are not yet available, but reporting of some data will be required at the time the credit is taken. It appears that this will include a report of the payroll taxes offset, an estimate of the payroll taxes that will be offset on the next report, a report of the tax IDs of all covered employees, an attestation of their involuntary termination, the amount of subsidy provided for each individual, and designation of whether the subsidy was for coverage of one person or more than one.

10. When is the subsidy treated as having been paid? On the date the individual's 35% payment is received. Care must be taken not to take the credit before this date, as it could result in an underpayment of payroll taxes and result in imposition of penalties.

11. Who is responsible to pay the subsidy? The answer depends upon the type of plan. If the plan is a multi-employer plan, the multi-employer plan must pay the subsidy. If the plan is either self-funded or is subject to COBRA (or both), the employer must pay the subsidy. If the plan is insured, is not a multi-employer plan, and is not subject to COBRA (essentially, if it is subject to a state continuation requirement), the law requires the insurer to pay the subsidy. Note that, where Regence must pay the subsidy, the employer or plan is still responsible for identification of the individuals who must be provided notices and for providing those notices. Also, the employer or plan will need to identify for Regence which of its employees were or are involuntarily terminated from employment.

12. If an individual elects the one-time special election COBRA offer in the new COBRA notice, then what? The individual will be entitled to COBRA coverage beginning on March 1, 2009 and will need to bring premiums current within 45 days of election. If there has been a break in the electing individual's coverage during the period between September 1, 2008 and March 1, 2009, that break will not count as (or toward) a significant break in coverage for purposes of calculating preexisting conditions. Note that the new notice does not allow a qualified beneficiary to establish continuation coverage with an effective date earlier than March 1, 2009.

13. Does the one-time special election period apply to continuations under state law? No, it does not appear to.