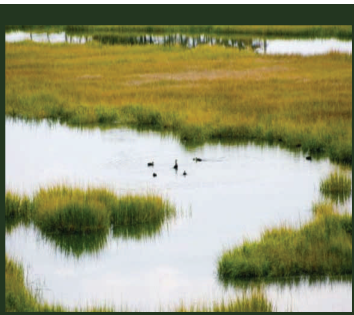

Mazonson LLC

Client Advisory

February 23, 2009

MAZONSON LLC

COBRA Premium Subsidy:
The American Recovery And Reinvestment Act of 2009

As you are probably aware, the federal economic stimulus bill which was signed into law on February 17, 2009, includes provisions for a temporary subsidy of COBRA premiums for involuntarily terminated employees. We are providing a high level summary of the new provisions below.

Summary of the new rules

- Employees who are involuntarily terminated between September 1, 2008, and December 31, 2009 and their covered dependents may be eligible for a 65% subsidy of their COBRA premiums from their employers (the subsidy is not available for a health care flexible spending arrangement). The subsidy does not apply to employees who voluntarily resign or who lose coverage due to a reduction in work hours.

- Eligible individuals must pay 35% of the COBRA premium in order to qualify for the subsidy.

- The subsidy begins effective March 1, 2009. Although the law applies to employees who were terminated as long ago as September 1, 2008, it is not retroactive. The subsidy only applies to periods of coverage (generally months) beginning on or after March 1, 2009.

- The subsidy is available to each eligible individual for up to nine months beginning on the later of March 1, 2009, or the date the individual loses coverage under the plan due to the employee's involuntary termination. (e.g., if an eligible individual's COBRA coverage commenced October 1, 2008, the subsidy would be available for nine months beginning on March 1, 2009).

- Although this is a federal subsidy program, the initial payer of the subsidy is the employer sponsoring the health plan. The employer then recovers the subsidies through a credit against payroll taxes, applied effective the date the 35% payment is received from the qualified individual. The premium subsidy does not have to be included in the gross income of the qualified individual. (Mazonson encourages you to contact your Tax Advisor about the tax-related features of the new law).

701 Edgewater Drive, Suite 230
Wakefield, MA 01880-6236

800.531.5200 toll free
781.224.5777 fax

www.mazonson.com

- Since the effective date of the subsidy is March 1, 2009, and employers may not be able to implement it on time, the law contains a provision for dealing with subsidy-eligible individuals who pay the full COBRA premiums for either March or April coverage. In such cases, the employer must either refund the 65% subsidy amount to the individual or credit the subsidy against the individual's future COBRA premiums.

- The subsidy ends on the ***earliest*** of:
  - ◊ The date the terminated employee either becomes eligible for other group health coverage (even if the employee does not enroll for the other coverage), or becomes eligible for Medicare. (Note: the employee will lose the subsidy, but not his/her right to maintain COBRA coverage for the maximum period allowed);
  - ◊ Nine months after the subsidy begins;
  - ◊ The end of the maximum COBRA coverage period required by law (including permissible early terminations);
  - ◊ For employees and/or their eligible dependents who elect coverage during the special enrollment period (see below), the end of the maximum COBRA coverage period that would have applied if the individual had elected COBRA when first eligible.

- To be eligible, an employee must:
  - ◊ Leave his or her job involuntarily for reasons other than gross misconduct;
  - ◊ Elect the coverage either during the initial COBRA enrollment period or the special second chance enrollment period provided under the stimulus bill.

- Employees and covered dependents who receive the subsidy are required to notify the Plan Administrator in writing when they become eligible under another group health plan or Medicare. Failure to do so is subject to a penalty of 110% of the subsidy. High income subsidy recipients may be required to repay the subsidy when they file their tax returns based on their adjusted gross income ($125,000 for individuals; $250,000 for married taxpayers filing jointly).

Special second chance enrollment period

The law provides a special COBRA election period for individuals who did not elect COBRA during their initial election period that began on or after September 1, 2008, or are currently in their COBRA election period and have not made their COBRA election as of the law's February 17, 2009, enactment date. This special second chance enrollment period begins on February 17, 2009, and ends 60 days after the date the Plan Administrator has provided notice about the availability of the subsidy. If an individual elects COBRA under this special enrollment period, coverage will not be retroactive to the date of the loss of regular coverage (i.e. , the initial COBRA qualifying event date when coverage was lost due to involuntary termination). Rather, coverage only needs to take effect as of March 1, 2009. **Any resulting gap in coverage cannot be counted toward a 63-day break for HIPAA creditable coverage purposes.**

Action Required

The law requires that the Plan Administrator provide a new notice within 60 days after February 17, 2009, to all employees who were involuntarily terminated since September 1, 2008, and who became eligible for COBRA. The purpose of the notice is to inform the employees of the opportunity to elect COBRA and receive the 65% premium subsidy. The notice will also need to be distributed to all employees involuntarily terminated through December 31, 2009. The DOL, Treasury and HHS are required to create model notices to assist Plan Sponsors no later than 30 days after February 17, 2009.

What you can tell employees now

Subsidies under the new law take effect March 1, 2009, but employers have two months to implement the provisions. Eligible employees will receive notices about their rights under these new rules in 6-8 weeks, and for those who are eligible for or covered under COBRA as of March 1, 2009, the subsidy will be retroactive to March 1, 2009.

Recommended action

If you are feeling overwhelmed by these changes, you are not alone. There are a number of very important requirements imposed on Plan Administrators in a very short amount of time. To help you organize your action plan, we have identified the following action steps:

1. Identify all those qualified beneficiaries who are or were eligible for COBRA by virtue of a qualifying event that was an involuntary termination of employment occurring between September 1, 2008 and February 16, 2009 who have not elected COBRA as of the enactment date or who elected but lost coverage. This includes spouses and children who were covered at the time of the qualifying event but are not covered now. They will be entitled to a special election period. NOTE: This also includes those whose election period has not yet ended as of the enactment date. Such qualified beneficiaries whose election period has yet to expire may choose to take advantage of the special election period but they will receive adjusted coverage dates if they do not make their election within their initial election period. Plan Administrators must work with their COBRA Administrators to tweak systems to accommodate this.
2. Determine if you wish to offer the ability to elect a different coverage option and the special enrollment period for such election. Due to ambiguities in the application of this otherwise optional provision, you should carefully consider the pros and cons of adopting such an option. For example, employers would likely be required to send information to its COBRA Administrators following a qualifying event that it does not typically send such as information regarding other benefit options available under the plan.
3. Determine if you wish to wait on model notices or draft notices independently.
4. Schedule time with your COBRA Administrator or your Mazonson Account Manager to identify and assess the system or process changes needed to send notices to those entitled to a special election and the decisions you made in 2 and 3. Revise election notices if you choose not to wait on model notices. In doing so, you must determine whether or not you wish to simply revise your current notices or prepare a supplement to be used with your current notices. Some Plan Administrators may choose to revise initial notices and SPDs even though not required by these changes.
5. Draft a subsidy waiver form for highly compensated employees and an “attestation of eligibility” form for all individuals who will be entitled to the premium assistance.
6. Revise HIPAA certificates of creditable coverage for those who take advantage of the special election period to reflect the fact that any gap between the date of the qualifying event and the date coverage begins (which is the first period of coverage following the enactment date) is not considered a “gap” in coverage for purposes of HIPAA’s preexisting condition rules.
7. Begin to develop a credit procedure for those continuants who pay more than 35% during the first two months. For example, if employers choose to apply the excess as a credit, and it is not or will not be used within 180 days, a refund process must be established.

8. Develop a procedure calculating the new premium structure, calculating the amount of subsidy due in the form of the payroll offset, and filing a claim for the subsidy. Additional guidance will be issued in the future regarding this process but prudent Plan Administrators will begin to think through the process now.
9. Review your plan documents, SPDs, and related communication materials (e.g., online summaries) to determine what (if any) changes are necessary due to stimulus.
10. Find out from your Payroll Administrator whether they can help you track and maintain the payroll information necessary to fulfill your notice obligations (amount of payroll taxes offset by the subsidy, etc).
11. Implement a procedure for sending out notices that the premium assistance is about to be exhausted. Employers should notify continuants in advance of their COBRA premium increase after the premium assistance is exhausted. Such notice would be provided, for example, upon exhaustion of the maximum nine month premium assistance period, or if the continuants becomes eligible for other coverage under a group health plan or Medicare.

What's ahead

We realize that this represents a major change to the way COBRA provisions have previously been administered. Mazonson will further advise you about the specific impact of these changes on your plans over the next several weeks as we further review the new provisions and model notices, and as we receive additional guidance from the DOL and other federal agencies.

In the meantime, if you have specific questions, please contact your **Mazonson Account Manager at 1-800-531-5211.**

For a copy of the new law, ARRA, see: http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.00001:

For general information regarding COBRA, see: http://www.dol.gov/dol/topic/health-plans/cobra.htm