



Labor and Employment News Alert

March 27, 2009

Employee Health Plan Update: New COBRA and CHIP Requirements

As most of you know by now, Congress recently amended the COBRA rules to establish a federal subsidy for certain COBRA premiums for people who suffer an involuntary job loss between September 2008 and December 2009. Our [February 20 News Alert](#) provided a fairly detailed explanation of those changes and what they mean for employers. In today's News Alert we provide more information about the new model COBRA notices that were published last week by the U.S. Department of Labor ("DOL") and which must be used by employers to explain the new federal subsidy program. If you use a third-party COBRA administrator to manage these issues, the following details may not be important. But if you have responsibility for COBRA administration, you need to be familiar with the notice details that are provided below.

You may also know that Congress reauthorized a program of state medical insurance programs for uninsured children and certain families. As a result of changes to these state-sponsored CHIP plans, employers must revise their HIPAA special enrollment periods under their employee medical plans, and must provide appropriate notice to their employees regarding these rights.

Here are the details:

Part 1: DOL Publishes New Model COBRA Notices

We explained last month that employees with an involuntary job loss between September 2008 and December 2009 only need to pay 35% of their COBRA premium for up to 9 months. Employers must pay the rest and can receive reimbursement from the federal government in the form of tax credits. Although we explained that new COBRA notices would be required under the new COBRA rules, we couldn't provide you with the details because the DOL had not yet issued new model notice documents. Those new notices were published last week (right on schedule!).

There are four different model COBRA notices. Each one is used in a specific situation:

1. General Notice (full version). This 13-page bundle of information and election materials must be provided to all qualified beneficiaries (not just the covered employee who was involuntarily terminated) who experienced a qualifying event at any time between September 1, 2008 through December 31, 2009 unless that person is already enrolled in COBRA continuation coverage or otherwise may be provided with one of the slightly abbreviated notices described below.
2. General Notice (abbreviated version). This slightly abbreviated notice form omits certain election materials and is for use with qualified beneficiaries who currently have COBRA continuation coverage because of a qualifying event between September 1, 2008 and December 31, 2009 and who do not, therefore, need the full-size notice package.
3. Alternative Notice. This form must be provided to persons who became eligible for continuation coverage under a state law rather than under the federal COBRA law. Washington state does not have its own separate COBRA law, so this particular form of notice will not be required for Washington employees.
4. Notice in Connection with Extended Election Periods. This notice is to be used only for individuals who had a qualifying event at any time after September 1, 2008 but before distribution of these new model notices, and who either did not elect COBRA continuation coverage or discontinued such coverage before learning about the new federal subsidy. This notice explains how such individuals have one more chance to elect COBRA coverage to take advantage of that subsidy.

You can find the model notices at the DOL's website: <http://www.dol.gov/ebsa/COBRAmodeInotice.html>.

Also, you can find helpful information about the new COBRA requirements at: <http://www.dol.gov/ebsa/COBRA.html>.

The new model notices (or appropriate alternatives) must be used by all employers starting no later than April 18, 2009, and revised notices must be sent to qualified beneficiaries (as described above) even if they already received earlier COBRA notices for job losses occurring after September 1, 2008.

Part 2: New CHIP Law Creates New Special Enrollment Periods For Employer-Sponsored Medical Plans

For those of you who are familiar with the HIPAA portability rules that apply to employer-sponsored medical plans, you already know that HIPAA created a special enrollment period during which employees must generally be permitted to enroll themselves and/or their dependents in their employer's health plan if those individuals have lost coverage under another medical plan. This year a new type of special enrollment period was created by federal legislation that extended and expanded a set of state and federal programs called State Children's Health Insurance Program or SCHIP.

In February the President signed a new law that replaces SCHIP with a slightly revised and expanded program that is now known as CHIP. The former SCHIP and the new CHIP programs are both federal/state medical insurance programs designed to provide coverage for uninsured children and certain adults.

- **Special Enrollment Period.** The expanded CHIP law creates a new special enrollment period for eligible employees and their dependents who:
 - lose coverage under a Medicaid or CHIP program; *or*
 - become eligible for a state premium assistance program that will help pay for coverage under an employer-sponsored health plan.

Here in Washington there is no such state premium assistance plan, so employers do not need to worry about new special enrollment rights except when employees and/or their dependents lose coverage under Medicaid or CHIP.

- **60 vs. 30 Days.** The CHIP special enrollment period extends for 60 days after a triggering event (unlike the shorter 30-day period for HIPAA special enrollment).
- **Notices.** Under HIPAA, notice of special enrollment rights are generally provided in new hire packets and summary plan descriptions (SPDs). The new CHIP law does not say when or how employers should inform employees of their new Medicaid/CHIP special enrollment rights. However, since the new Medicaid/CHIP triggering event amends the HIPAA special enrollment law, it seems likely that the current enrollment notices will need to be revised to describe the new Medicaid/CHIP provisions, including the 60-day period for requesting enrollment.
- **New Hires.** At the very least, employers should include the updated notices in enrollment materials for newly eligible employees beginning on April 1, 2009. Though not currently required by the law, it is probably a good idea to notify all employees about these new special enrollment rights.

Please contact [Larry Shapero](#) or [Steve DeForest](#) if you would like additional information about the new COBRA and CHIP requirements or any aspect of your employer-sponsored health plans.

Upcoming Events

April 15, 2009 Breakfast Briefing: Advanced Workplace Investigation Seminar: *Insights and Advice for the Experienced Workplace Investigator*

June 10, 2009 Breakfast Briefing: Bob Howie's Annual Employment Update

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