



DAVID A. PATERSON
GOVERNOR

STATE OF NEW YORK
DEPARTMENT OF CIVIL SERVICE
ALFRED E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12239
www.cs.state.ny.us

NANCY G. GROENWEGEN
COMMISSIONER

PA09-12
PAEX09-08

MEMORANDUM

TO: Participating Agency CEOs and HBAs

FROM: The Employee Benefits Division

SUBJECT: Additional Information Regarding the American Recovery and Reinvestment Act of 2009 COBRA Subsidy Provisions

DATE: April 16, 2009

As noted in the memoranda PA09-10 and PAEX09-06 dated April 2, 2008, the American Recovery and Reinvestment Act of 2009 (ARRA) includes significant changes to the COBRA continuation coverage rules. In general, ARRA provides COBRA premium assistance funded by the federal government equal to 65% of the COBRA premium for COBRA qualified beneficiaries eligible as the result of the employee's involuntary termination of employment occurring during the period September 1, 2008 through December 31, 2009.

The Employee Benefits Division has received clarification from the U.S. Department of Health and Human Services (HHS) regarding ARRA COBRA issues that have particular relevance for NYSHIP. HHS has advisory jurisdiction with respect to COBRA continuation coverage as it pertains to state and local government employers and their group health plans. Therefore, you may find the following information useful in complying with the ARRA requirements and/or making determinations with respect to Requests for Treatment as an Assistance Eligible Individual.

Enrollees eligible for NYSHIP continuation coverage under vestee provisions

We received the following information from HHS in response to the question whether a former employee who was eligible for NYSHIP coverage as a vestee (because they have met the requirements for retiree coverage, except for age) by paying 100% of the NYSHIP premium could be eligible for the ARRA COBRA subsidy:

The inquiry for COBRA purposes is simply whether group health plan coverage is lost because of a qualifying event. If so, the COBRA law mandates that the plan offer COBRA coverage. Even if an individual retains the same benefit package that he or she had as an employee, but must pay a higher premium for the coverage than active

employees must pay, the individual has experienced a loss of coverage. Thus, vested individuals whose employment is terminated experience a loss of coverage because they must pay 100 percent of the cost of coverage, which is greater than the amount that active employees must pay for the same coverage.

In the case of a vested employee who experienced a COBRA qualifying event of involuntary termination of employment, the vested employee is entitled to remit 35 percent of the full premium charged for NYSHIP continuation coverage for up to nine months if the vested employee is an “assistance eligible individual,” as defined by ARRA.

Therefore, employees who terminate, or have terminated, employment during the period September 1, 2008 through December 31, 2009, and either elected or were eligible to elect coverage as a vestee must receive the ARRA required COBRA notices. EBD is notifying NYS vestees of their possible eligibility for the ARRA COBRA subsidy. Enclosed for your information is a copy of the explanatory memo sent to NYS vestees with the required COBRA notices.

Further, under NYSHIP policy, if a vestee elects COBRA continuation coverage because of eligibility for the ARRA premium reduction, he or she may change to vestee coverage when eligibility for the reduction ends and retain the right to coverage as a retiree provided that continuous coverage under NYSHIP is maintained from the time employment terminated until retirement age is attained.

Elected officials who lose coverage due to loss of an election

We received the following information in response to the question of whether an elected official who lost or loses coverage during the specified ARRA period could be eligible for the ARRA COBRA subsidy:

If an elected official is permitted to participate in the plan sponsor’s group health plan by virtue of the performance of services for the plan sponsor, the elected official is entitled to an offer of COBRA coverage when he or she leaves office. In the opinion of [the HHS representative], if an elected official is precluded from running for reelection because of term limits, or runs for reelection and is voted out of office, that would constitute an involuntary termination of employment. That would be distinguished from a situation in which an elected official is eligible to run for reelection but declines to do so. If the termination of employment occurs during the period September 1, 2008 through December 31, 2009, and the elected official elects COBRA continuation coverage, in the opinion of [the HHS representative], he or she would be eligible for the premium reduction under the American Recovery and Reinvestment Act of 2009 (ARRA) commencing with the first period of coverage beginning on or after the date of enactment (February 17, 2009).

Premium reduction when a NYSHIP enrollee has family coverage and has a covered dependent that is not qualified a beneficiary under COBRA

EBD needed to ascertain how the premium reduction would apply to enrollees who are Assistance Eligible Individuals, but cover dependents who are not qualified beneficiaries under COBRA, i.e. domestic partners and same sex spouses. The following information is based on

information included in IRS Notice 27-2009; a link to the notice appears on the DOL website noted below or can be found directly at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

A qualified beneficiary with respect to a covered employee under a group health plan is the spouse of the employee under Federal law or a dependent child of the employee under Federal law if, generally, the spouse or dependent child was a beneficiary under the plan on the day before the qualifying event. Qualified beneficiary also includes a child who is born to or adopted by the covered employee during the period of COBRA continuation coverage. Subject to the preceding sentence, qualified beneficiary does not include a spouse or dependent child not covered before the qualifying event and added to the coverage during a later enrollment period. In addition, if an individual does not meet the definition of a qualified beneficiary under Federal COBRA, the individual's coverage is not eligible for the premium reduction under ARRA, even though such an individual may be covered under a plan by its terms, or as required by State law.

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 non-assistance 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.

Since NYSHIP has only two premium rates – individual and family, the premium subsidy would apply to the full family coverage rate as long as one of the covered dependents was a qualified beneficiary under Federal COBRA provisions, e.g. a dependent child. However, if a NYSHIP enrollee who qualifies for the premium reduction has as their only dependent a domestic partner or a same sex spouse, the reduction would apply only to the individual premium amount and the enrollee would be responsible for the full cost of dependent coverage.

Information related to these and other ARRA COBRA provisions can be found on the U.S. Department of Labor website at <http://www.dol.gov/ebsa/cobra.html>.

You may also contact the Employee Benefits Division at 518-474-2780 or 1-800-422-3671.