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NY10-02
SEHP10-01

TO: New York State Agency Health Benefits Administrators

FROM: Employee Benefits Division

SUBJECT: Extension of COBRA ARRA Premium Assistance

DATE: February 8, 2010

The American Recovery and Reinvestment Act of 2009 (ARRA) created a 9-month COBRA subsidy for employees and their dependents who lost group health plan coverage due to the employee's involuntary termination between September 1, 2008 and December 31, 2009. In December 2009, Congress passed the Department of Defense Appropriations Act of 2010 (DDAA), which increased the maximum period for receiving the subsidy an additional six months (from 9 to 15 months) and applied the subsidy to involuntary terminations through February 28, 2010. Under the provisions of these laws, assistance eligible individuals pay only 35 percent of the COBRA continuation coverage premiums.

Notice of these changes will be sent by the Employee Benefits Division to all enrollees and dependents who experience any type of COBRA qualifying event between September 1, 2008 and February 28, 2010, and who have not yet been provided a COBRA election notice. This notice will be mailed during the week of February 8th.

Eligibility for the premium reduction was automatically extended for those qualified individuals who were in a transition period. A transition period consists of individuals who elected COBRA continuation coverage following an involuntary termination and who remained on COBRA coverage as of October 31, 2009. The transition period began immediately after the end of the maximum number of months of premium reduction available under ARRA (generally 9 months) and will end at the completion of the maximum number of months of premium reduction available under DDAA (generally 15 months), provided the COBRA enrollee continues to meet the eligibility requirements.

In order to process enrollee applications in a timely manner it is imperative that agencies provide a verification letter to each employee who experiences a loss of coverage due to an involuntary termination of employment during the period September 1, 2008 through February 28, 2010. Please ensure that the letter is addressed to the enrollee and is signed by a representative of your agency. Advise enrollees to include the letter when completing their Request for Treatment as an Assistance Eligible Individual. This letter serves as the required verification that the termination of employment was involuntary.

We have included with this memo, a copy of the material being sent to NYSHIP enrollees and qualified beneficiaries. This includes the *COBRA Continuation Coverage Premium Assistance Extension Notice*, and the *Summary of the COBRA Premium Reduction Provisions under ARRA, as amended*.

If you have any questions you may contact your processor, or the Employee Benefits Division COBRA Unit at (518) 457-5754 or 1-800-833-4344.



COBRA CONTINUATION COVERAGE PREMIUM ASSISTANCE EXTENSION NOTICE

February 10, 2010

This notice contains important information about additional rights to continue your health care coverage in the New York State Health Insurance Program (NYSHIP). The American Recovery and Reinvestment Act of 2009 (ARRA) created a 9-month COBRA subsidy for employees and their dependents who lost group health plan coverage due to the employee's involuntary termination of employment between September 1, 2008 and December 31, 2009. In December 2009, Congress passed the Department of Defense Appropriations Act of 2010 (DDAA), which increased the maximum period for receiving the subsidy an additional six months (from 9 to 15 months), and applied the subsidy to involuntary terminations through February 28, 2010.

If you were enrolled in NYSHIP COBRA as of October 31, 2009, and receiving the premium subsidy provided for by ARRA, your period for receiving the subsidy was automatically extended. The subsidy will continue to apply for the maximum of 15 months as long you otherwise remain eligible for the premium reduction.

The enclosed "*Summary of the COBRA Premium Reduction Provisions Under ARRA, as Amended*" and "*COBRA Continuation Coverage and the American Recovery and Reinvestment Act of 2009 (ARRA) Frequently Asked Questions, as Amended*" provide more detailed information regarding the COBRA premium subsidy.

If you have any questions about this notice or your eligibility for the premium reduction, you may contact:

New York State Department of Civil Service
Employee Benefits Division – COBRA Unit
Alfred E. Smith State Office Building
Albany, NY 12239

Telephone: 518-457-5754 (Albany area)
Toll-free: 1-800-833-4344 (U.S., Canada, Puerto Rico or Virgin Islands)

SUMMARY OF THE COBRA PREMIUM REDUCTION PROVISIONS UNDER ARRA, as Amended

The American Recovery and Reinvestment Act of 2009 (ARRA) became effective on February 17, 2009, and was subsequently amended by the Department of Defense Appropriations Act on December 19, 2010. These laws give "Assistance Eligible Individuals" the right to pay reduced COBRA premiums for periods of coverage beginning on or after February 17, 2009 and can last up to 15 months.

To be considered an "Assistance Eligible Individual" and receive reduced premiums you:

- MUST have a continuation coverage election opportunity related to an involuntary termination of employment that occurred at some time from September 1, 2008 through February 28, 2010;
- MUST elect the coverage;
- MUST NOT be eligible for Medicare; AND
- MUST NOT be eligible for coverage under any other group health plan, such as a plan sponsored by a successor employer or a spouse's employer.

◆ IMPORTANT ◆

If, after you elect COBRA and while you are paying the reduced premium, you become eligible for other group health plan coverage or Medicare you MUST notify the plan in writing. If you do not, you may be subject to a tax penalty. (See Form *COBRA 0409 EOC*)

Electing the premium reduction disqualifies you for the Health Coverage Tax Credit. If you are eligible for the Health Coverage Tax Credit, which could be more valuable than the premium reduction, you will have received a notification from the IRS.

The amount of the premium reduction is recaptured for certain high income individuals. If the amount you earn for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return) all or part of the premium reduction may be recaptured by an increase in your income tax liability for the year. If you think that your income may exceed the amounts above, you may wish to consider waiving your right to the premium reduction. For more information, consult your tax preparer or visit the IRS webpage on ARRA at www.irs.gov.

For specific information related to NYSHIP's administration of the ARRA Premium Reduction or to notify NYSHIP of your ineligibility to continue paying reduced premiums, contact:

New York State Department of Civil Service
Employee Benefits Division – COBRA Unit
Alfred E. Smith State Office Building
Albany, NY 12239

Telephone: 518-457-5754 (Albany area)
Toll-free: 1-800-833-4344 (U.S., Canada, Puerto Rico or Virgin Islands)

If you are denied treatment as an "Assistance Eligible Individual" you may have the right to have the denial reviewed. For more information regarding reviews or for general information about the ARRA Premium Reduction go to: www.dol.gov/COBRA or call 1-866-444-EBSA (3272).

COBRA CONTINUATION COVERAGE AND ARRA 2009 as amended by DDAA 2010

Frequently Asked Questions

The Department of Civil Service (DCS) is providing these selected Frequently Asked Questions (FAQs) prepared by the United States Department of Labor (DOL) and Internal Revenue Service (IRS), that help to explain the ARRA/DDAA COBRA subsidy requirements. Information included in *italics* has been added by the DCS to provide additional information that applies to NYSHIP. Additional FAQs are available on the DOL and IRS websites as noted at the end of this document.

General Questions

Q1 – I have heard that the stimulus package enacted in February 2009 included a temporary COBRA premium reduction and that the premium reduction period has now been extended. I would like more information.

COBRA allows certain people to extend employer-provided group health coverage, if they would otherwise lose the coverage due to certain events such as loss of a job. The stimulus package, which was enacted in February 2009 as the American Recovery and Reinvestment Act of 2009 (ARRA), temporarily reduces the premium for COBRA or comparable State continuation coverage for eligible individuals. The Department of Defense Appropriations Act, 2010 (2010 DOD Act) was signed by the President on December 19, 2009. The 2010 DOD Act amended ARRA to extend the period to qualify for the COBRA premium reduction until February 28, 2010 and the maximum period for receiving the subsidy an additional six months (from nine to 15 months).

Individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred during the period from September 1, 2008 through February 28, 2010 and who elect COBRA may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the premium for COBRA coverage under their plans for up to 15 months. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under comparable State continuation coverage laws.

Q2 – If my eligibility for the premium reduction under ARRA expired (after receiving it for nine months) in November and I paid the full premium for December – will I be reimbursed for the additional health premium covered by this subsidy?

ARRA, as amended by the 2010 DOD Act, entitles individuals to pay reduced premiums for the six months immediately following the initial nine months (assuming continued eligibility for the premium reduction program). *If you paid the full 100% premium in December NYSHIP will credit your account against future payments.*

Q3 – What plans does the premium reduction apply to?

The COBRA premium reduction provisions apply to all group health plans sponsored by private-sector employers or employee organizations (unions) subject to the COBRA rules under the Employee Retirement Income Security Act of 1974 (ERISA). The provisions also apply to plans sponsored by State or local governments subject to the continuation provisions under the Public Health Service Act, and plans in the Federal Employee Health Benefits Program (FEHBP). The premium reduction is also available for group health insurance that is required by State law to provide comparable continuation coverage.

Please note: New York State Insurance Law has been amended to provide consistency between the ARRA/DDAA COBRA requirements and the State's Continuation Coverage Law requirements applicable to employers with less than 20 employees.

Q4 - How can I tell if I am eligible to receive the COBRA premium reduction?

The ARRA/DDAA premium reduction is available to "Assistance Eligible Individuals." To be considered an Assistance Eligible Individual and get reduced premiums you:

- MUST have a continuation coverage election opportunity related to an involuntary termination of employment that occurred at some time from September 1, 2008 through February 28, 2010;
- MUST elect the coverage;
- MUST NOT be eligible for Medicare; AND
- MUST NOT be eligible for coverage under any other group health plan, such as a plan sponsored by a successor employer or a spouse's employer.

Electing the premium reduction disqualifies you for the Health Coverage Tax Credit, which could be more valuable to you than the premium reduction. Additionally, certain high-income individuals may have to repay the amount of the premium reduction through an increase in income taxes. (See Q10 below)

Please note: If an employee's termination of employment is due to gross misconduct, the employee and any dependents generally would not qualify for COBRA or the premium reduction.

** This includes vestee coverage under NYSHIP.*

Q5 - If an involuntary termination and loss of coverage resulting in eligibility for COBRA continuation coverage occurred before September 1, 2008 can the individual become an Assistance Eligible Individual?

No. The involuntary termination resulting in COBRA continuation coverage must occur during the period from September 1, 2008, through February 28, 2010, even if the individual is still on COBRA continuation coverage after February 17, 2009.

Q6 – In order to be an Assistance Eligible Individual, must the individual have coverage under the group health plan at the time of the involuntary termination of employment?

In general, yes. The individual must have coverage at the time of the involuntary termination of employment. This qualifying event must occur at any time from September 1, 2008 through February 28, 2010. Newborns and children who were adopted or placed for adoption after the qualifying event are also considered qualified beneficiaries and so would have the same rights as someone who had coverage at the time of the qualifying event.

Q7 – If I am eligible for the premium reduction, how long will it last?

Your premium reduction can last up to 15 months. However, it will end earlier if:

- You become eligible for Medicare or another group health plan (such as a plan sponsored by a new employer or a spouse's employer*); or
- You reach the end of your maximum COBRA coverage period.
- You fail to remit timely premium payments.

If you continue your COBRA coverage after the premium reduction period, you may have to pay the full amount of the premium. Failure to do so may result in your loss of COBRA coverage. Contact your plan administrator for more information.

**Individuals paying reduced COBRA premiums must notify their plans if they become eligible for coverage under another group health plan or Medicare. Failure to do so can result in a tax penalty.*

Q8 – Does ARRA/DDAA change any State program requirements or time periods for election of continuation coverage?

No. ARRA/DDAA does not change any requirement of a State continuation coverage program. ARRA/DDAA only allows Assistance Eligible Individuals who elect continuation coverage under State insurance law to receive a premium reduction for up to 15 months. It also allows Assistance Eligible Individuals to switch to other coverage offered to active employees if permitted by the plan provided that the new coverage is no more expensive than the prior coverage.

Premium Questions

Q9 – How do I apply for the premium reduction?

If you were covered by an employment-based health plan on the last day of the employee's employment, the plan should provide you a notice of your eligibility to elect COBRA and to receive the premium reduction. The notice should include any forms necessary for enrollment. You may also want to contact your plan directly to ask about taking advantage of the premium reduction.

Q10 – Are there income limits for the premium reduction?

If the amount you earn for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return), you may have to repay all or part of the premium reduction through an increase in your income tax liability for the year. If you think that your income may exceed the amounts above, you may wish to consider waiving your right to the premium reduction. For more information, consult your tax preparer or visit the IRS web page on ARRA.

Q11 – How does the 65% premium subsidy get paid to me?

You will not receive a payment. Assistance Eligible Individuals are responsible for paying only 35% of the COBRA premium for the period of coverage. The remaining 65% of the premium is reimbursed directly to the employer, plan administrator, or insurance company through a payroll tax credit.

Q12 – Does the 35% I am required to pay include any administrative fees plans are permitted to charge, or do I need to pay that fee separately?

If you are an Assistance Eligible Individual, you will only need to pay the amount that is 35% of what you would otherwise pay for your COBRA coverage, which already includes any administration fee.

Involuntary Termination Clarification Questions

Q13 - Does an involuntary termination include a lay-off period with a right of recall or a temporary furlough period?

Yes. An involuntary reduction to zero hours, such as a lay-off, furlough, or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of the premium reduction.

Q14 - Does an involuntary termination include a reduction in hours?

Generally no. If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. However, an employee's voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

Q15 - Does involuntary termination include an employer's action to end an individual's employment while the individual is absent from work due to illness or disability?

Yes. Involuntary termination occurs when the employer takes action to end the individual's employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual's employment status is not an involuntary termination).

Q16 - Does an involuntary termination include retirement?

If the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated, the retirement is an involuntary termination.

Q17 - Does involuntary termination include involuntary termination for cause?

Yes. However, for purposes of Federal COBRA, if the termination of employment is due to gross misconduct of the employee, the termination is not a qualifying event and the employee and other family members losing health coverage by reason of the employee's termination of employment are not eligible for COBRA continuation coverage.

Q18 - Does an involuntary termination include a resignation as the result of a material change in the geographic location of employment for the employee?

Yes.

Other Questions

Q19 - I am currently enrolled in COBRA continuation coverage, but would like to switch to a different coverage option offered by my former employer. Can I do this?

Group health plans are permitted, but not required, to allow qualified beneficiaries to enroll in coverage that is different than the coverage they had at the time of the qualifying event. ARRA/DDAA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium reduction, provided that:

- The premium for the different coverage is the same or lower than the coverage the individual had at the time of the qualifying event;
- The different coverage is also offered to active employees; and
- The different coverage is not limited to only dental coverage, vision coverage, counseling coverage, a flexible spending account, or an on-site medical clinic.

NYSHIP will not permit an option change solely as the result of eligibility for COBRA. See your General Information Book for information about changing options outside the Option Transfer Period.

Q20 - Only part of my family elected COBRA coverage but all of us were eligible. Can I enroll the others and take advantage of the premium reduction?

Each COBRA qualified beneficiary may independently elect COBRA coverage. Moreover, even if a family member did not elect COBRA coverage when first eligible, if the individual would be an Assistance Eligible Individual (except for his or her failure to elect COBRA coverage when first eligible or except because he or she discontinued COBRA coverage before February 17, 2009), that individual gets a second opportunity to enroll and qualify for the premium reduction. (See Q4 above)

Q21 - I was offered COBRA in connection with a qualifying event that was a layoff on or after September 1, 2008, but I believe that I am also eligible for the Health Care Tax Credit under the Trade Adjustment Act. Which program can I receive benefits from?

Electing the premium reduction disqualifies you for the Health Coverage Tax Credit. If you are eligible for the Health Coverage Tax Credit, which could be more valuable than the premium reduction, you will have received a notification from the IRS.

If you have questions about these provisions, you may call the Health Coverage Tax Credit Customer Contact Center toll-free at 1-866-628-4282. More information about the Trade Act is also available.

Q22 - If an Assistance Eligible Individual pays the full COBRA premium and is later determined to be eligible for the premium reduction, what should the plan do with the overpayment?

The plan (or other person to whom such payment is payable) can apply the overpayment as a credit toward subsequent premium payments as long as it is reasonable to believe that the credit can be used within 180 days of the overpayment. Otherwise, the overpayment must be reimbursed to the individual within 60 days of receipt.

Appeals

Q23 - What can I do if my former employer's group health plan denies my application for the premium reduction?

If the plan determines that you are not eligible for the premium reduction, you can request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department of Health and Human Services will handle appeals for Federal, State, and local governmental employees, as well as appeals related to group health insurance coverage provided pursuant to state continuation coverage laws. The Departments are required to make a determination regarding your appeal within 15 business days after receiving your completed application for review.

Note: Appeals to the Department of Labor must be submitted on a U.S. Department of Labor application form. The form will soon be available at www.dol.gov/COBRA and can be completed online or mailed or faxed as indicated in the instructions. If you believe you have been inappropriately denied eligibility for the premium reduction, you may wish to speak with an Employee Benefits Security Administration Benefits Advisor at 1-866-444-3272 before filing this form.

More Information

Q24 - How can I get more information on my eligibility for COBRA or the premium reduction?

Guidance and other information is available on the Department of Labor web site at www.dol.gov/COBRA. You can also call 1-866-444-3272 to speak to an Employee Benefits Security Administration Benefits Advisor.

Information about premium reduction provisions is also available from the IRS [www.irs.gov] and the Department of Health and Human Services [www.dhhs.gov], which, along with the Department of Labor [www.dol.gov], share responsibility for COBRA and the new requirements added by ARRA. DDAA.

If you have any questions concerning this information, or have additional questions not covered in this material, you may also contact:

New York State Department of Civil Service
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Alfred E. Smith State Office Building
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Toll-free: 1-800-833-4344 (U.S., Canada, Puerto Rico or Virgin Islands)