



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Benefits Administrator Memo

#10-01

To: Benefits Administrators
From: State and Local Health Benefits Programs
CC: All OHB
Date: February 12, 2010
Re: **UPDATE** – Extension of ARRA Premium Assistance Eligibility and Duration of Premium Reduction

This memorandum expands upon Benefits Administrator Memo #09-09 which provided preliminary guidance regarding the effect of the Department of Defense Appropriations Act of 2010 (2010 DOD Act) on the American Recovery and Reinvestment Act of 2009. An updated COBRA Election Notice will be available on the DHRM web site in the next few days; however, a copy in MS Word format is attached for your immediate use. This update is based on the model notice provided by the Department of Labor and includes changes discussed in Benefits Administrator Memo #09-09 as well as the new eligibility provision discussed below. This notice will be referred to as “the/an updated notice” for purposes of this memorandum and should supersede any prior versions of the COBRA Election Notice.

New Eligibility Provision

Another important change that resulted from the 2010 DOD Act is elimination of the requirement that eligibility for and election of COBRA, in addition to the involuntary termination of employment, must occur within the defined eligibility period. As an example, this means that an individual who was involuntarily terminated in December 2008, was eligible for 12 months of transition benefits under WTA from January 1 through December 31, 2009, and then became eligible for COBRA effective January 1, 2010, could now be eligible for ARRA premium reduction since the actual termination occurred during the new eligibility window of September 1, 2008, through February 28, 2010. (Terminations during December 2008 with 12 months of WTA transition health plan benefits will be the first terminations to realize the impact of updated eligibility provisions.) Prior to the 2010 DOD Act amendment, COBRA eligibility must have occurred within this window also.

In summary, anyone whose employment was involuntarily terminated during September 1, 2008, through February 28, 2010, and who is eligible for COBRA based on that qualifying event, regardless of the date that COBRA could begin, may qualify for premium assistance. This new provision updates guidance provided in Benefits Administrator Memo #09-03.

Notice Requirements

DHRM has issued ARRA Extension Notices to all COBRA participants who were Assistance Eligible Individuals on October 31, 2009, as required. This would include anyone whose original nine months of premium assistance ended on November 30, 2009, or later. DHRM has also issued Extension Notices to anyone who has been approved for premium assistance after October 31, 2009, regardless of their COBRA or premium assistance start date.

However, as introduced in BA Memo #09-09, agencies will be responsible for sending some new/replacement Election Notices as follows:

- No later than February 17, 2010, send an updated COBRA Election Notice (the updated notice) to anyone who had a qualifying event that was termination of employment (voluntary or involuntary) in October or November and did not receive an updated notice UNLESS they have already made a COBRA Election that included a Request for Premium Assistance that has been forwarded to DHRM. (DHRM will send Extension Notices that explain the 2010 DOD Act amendment to those individuals along with their ARRA approval or denial letter.) If you need to send an updated notice, provide a new 60-day election window starting with the date of the updated notice. If you sent a non-updated notice to individuals with a qualifying event in October or November that was anything other than a termination of employment, no additional notice is necessary.
- If you used the interim notice provided by DHRM with BA Memo #09-09 for any qualifying events that occurred in December 2009 (COBRA start date January 1, 2010), send an updated notice UNLESS the qualified beneficiary has already made a COBRA election and requested premium assistance. (DHRM will send Extension Notices that explain the 2010 DOD Act amendment to those individuals along with their ARRA approval or denial letter.) If you need to send an updated notice, provide a new 60-day election window starting with the date of the updated notice, and send the notices no later than February 17.
- If you failed to send a COBRA Election Notice to anyone experiencing any qualifying event between September 1, 2008, and February 28, 2010, send them an updated notice immediately.

Some Reminders:

- You must use the updated notice as your COBRA Election Notice for all COBRA qualifying events going forward, not just for termination of employment.
- Employing agencies must make an initial determination as to whether a termination of employment is voluntary or involuntary for purposes of completing the Election Notice and

submitting Requests for Treatment as an Assistance Eligible Individual to DHRM. Benefits Administrator Memo #09-03 provides some basic guidance to assist in making this determination. However, DHRM will review the request and supporting documentation to approve or deny the request for premium assistance. It is not the agency's responsibility to approve or deny premium assistance, but the agency's input is critical to making a final determination. Including a thorough explanation of the circumstances surrounding termination along with the Request for Treatment as an Assistance Eligible Individual is very helpful and may serve as the employer's attestation for any potential audit purposes.

- If an employee questions his or her eligibility for premium assistance, direct him or her to the information in the Election Notice. Do not discourage anyone from requesting assistance if they feel they are eligible, even if the agency disagrees. Cases can differ based on individual circumstances, and DHRM will review the documentation provided by the agency to approve or deny eligibility for premium assistance. If you are assisting an individual who feels that his or her circumstances meet the requirements for premium assistance, encourage him or her to complete the Request for Treatment as an Assistance Eligible Individual, attach your initial determination of the termination status, and send everything to DHRM. DHRM may request additional information in order to evaluate the premium assistance status. If DHRM denies the request, the qualified beneficiary is given a resource for appealing the denial.
- Agencies should avoid keying COBRA elections that include requests for premium assistance. When DHRM receives the election and request, it will key the coverage based on the approval or denial of premium assistance. If the election is keyed by the agency, it will generate a full-cost bill. If premium assistance is approved, the beneficiary will have been over-billed.
- There is no time limit for applying for premium assistance; however, if the individual is not eligible for COBRA (or a benefit that runs concurrently with COBRA), he or she will generally not be eligible for premium assistance.
- DHRM continues to get questions regarding retiree eligibility. Individuals who retire in lieu of involuntary termination may be eligible for premium assistance if they fulfill all other eligibility criteria (see Benefits Administrator Memo #09-03 for more information regarding retiree eligibility and Health Benefits E-News dated June 30, 2009, for a summary of the ARRA process for retirees).
- Generally, due to required timing for providing an Election Notice and electing COBRA coverage, COBRA coverage often becomes active retroactively. In addition, COBRA premiums must be paid before claims can be processed for services during any month of coverage. If agencies get questions from qualified beneficiaries or providers regarding access to COBRA coverage during the election period or prior to initial billing or premium payment, the appropriate answer is that the qualified beneficiary does not have current coverage but will have coverage retroactively if COBRA is elected and the premium is paid. Any services received prior to election and/or premium payment but during the defined COBRA period can be submitted for adjudication once the election has occurred and premium is paid.

Additional legislation could affect COBRA premium assistance. DHRM will keep you updated.