



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Benefits Administrator Memo #10-02

To: Benefits Administrators
From: State and Local Health Benefits Programs
CC: All OHB
Date: April 1, 2010
Re: ARRA Update - Temporary Extension Act of 2010

This memorandum includes updated guidance regarding the requirements of the American Recovery and Reinvestment Act of 2009, as amended by the Department of Defense Appropriations Act 2010 and, most recently, the Temporary Extension Act of 2010. If you need more background on this legislation, please refer to previous guidance:

- BA Memo #09-01
- BA Memo #09-03
- BA Memo #09-04
- BA Memo #09-09
- BA Memo #10-01
- Health Benefits E-News articles dated 6/30/09, 7/31/09, 11/16/09, 3/2/10, and 3/5/10

Extension of eligibility period for premium assistance

The Temporary Extension Act of 2010 (TEA) extends the period of eligibility for COBRA premium assistance due to involuntary termination of employment through March 31, 2010 (formerly February 28, 2010). This means that, to qualify as an Assistance Eligible Individual, qualified beneficiaries must experience an involuntary termination of employment during the period starting with September 1, 2008, and ending March 31, 2010.

Involuntary termination following a reduction of hours

TEA also provides that an involuntary termination of employment that follows a reduction of hours may be a qualifying event for purposes of ARRA premium reduction if the termination occurs on or after March 2, 2010, and not later than March 31, 2010, and the reduction of hours occurred at any time from September 1, 2008, through March 31, 2010.

Example: an employee loses health plan coverage (which can include loss of just the employer premium contribution) due to a reduction of hours (e.g., starting a leave of absence or changing to part-time status) during the ARRA eligibility period and is appropriately offered COBRA continuation coverage. This is followed by an involuntary termination of employment (based on IRS guidance) while still eligible for COBRA. While the reduction of hours generally will not establish eligibility for premium assistance, the involuntary termination of employment could do so if the qualified beneficiary was otherwise eligible (e.g., not eligible for any other group health plan coverage or Medicare) and termination occurred between March 2 and March 31, 2010. This may also apply to individuals who were on a leave of absence that ran concurrently with COBRA, even if the employer contribution continued until the termination of employment. Upon offer of COBRA continuation coverage based on the reduction of hours, if the qualified beneficiaries did not elect continuation coverage or elected and discontinued continuation coverage, they will be entitled to a second election opportunity based on the termination of employment event (see Notice Requirements below), but the total period of COBRA continuation will not be extended beyond the COBRA eligibility period based on the original qualifying event, even if the COBRA period remaining after the involuntary termination of employment is less than the 15-month maximum period of premium assistance. Under these circumstances, the subsidy period would not begin before the April premium and would end the earlier of either 15 months after the start of premium assistance or the end of COBRA. Also under these circumstances, if COBRA is elected based on the termination of employment, the break in coverage will be considered creditable for purposes of HIPAA portability.

Notice Requirements

Updated Election Notice

The attached updated COBRA Election Notice (which includes the *General Notice* of ARRA rights) should be mailed to anyone experiencing any COBRA qualifying event during the period starting with September 1, 2008, and ending with March 31, 2010, who has not yet received an Election Notice. Most specifically, this can now be sent to qualified beneficiaries who had a qualifying event in March, lost coverage on March 31, 2010, and can elect COBRA coverage effective April 1, 2010. The previous version of the Election Notice did not include the TEA amendments and, therefore, did not apply to qualifying events that occurred in March. This should be sent within the normal Election Notice time frame (within 14 days of the loss of coverage). If you sent the old version of the Election Notice to anyone who experienced any termination of employment (voluntary or involuntary) on or after March 1, 2010, including a termination of employment during the period starting March 2, 2010, and ending March 31, 2010, that followed a reduction of hours, you should send the updated notice immediately and provide a new 60-day election period.

You may have to adjust the format of this notice to ensure that forms may be detached and returned without losing important additional information that should be maintained by the qualified beneficiary. For example, the Election Notice should be blank on the back, and the Request for Treatment as an Assistance Eligible Individual should provide the correct front and back on one page.

Terminations of Employment after a Reduction of Hours

If you have former employees who lost coverage due to a reduction of hours during the period starting September 1, 2008, and ending on March 31, 2010, and then experienced a termination of employment during the period beginning March 2, 2010 and ending March 31, 2010 and either:

- were offered, elected and continue to be enrolled in COBRA continuation coverage; or,
- were offered COBRA coverage and either did not elect coverage or elected and discontinued coverage,

you should offer COBRA continuation coverage based on the termination of employment using the updated Election Notice format attached to this memo; however the language in the box on page one should be replaced as follows:

ATTENTION: The American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Department of Defense Appropriations Act, 2010, and the Temporary Extension Act of 2010, reduces the COBRA premium in some cases. You are receiving this notice because you experienced a qualifying event that was a reduction of hours at some time from September 1, 2008, through March 31, 2010. Regardless of whether you elected, chose not to elect, or elected but subsequently discontinued COBRA continuation coverage, you have new rights. If your reduction of hours was followed by an involuntary termination of employment occurring on or after March 2, 2010, and by March 31, 2010, you may be eligible for a second COBRA election opportunity and the ARRA temporary premium reduction for up to 15 months. To help determine whether you can get the ARRA premium reduction, you should read this notice and the attached documents carefully. In particular, reference the “Summary of the COBRA Premium Reduction Provisions under ARRA, as amended” for details regarding eligibility, restrictions and obligations and the “Application for Treatment as an Assistance Eligible Individual.” If you do not have COBRA continuation coverage (either because you never elected the coverage or because you elected but later discontinued the coverage) and believe you meet the criteria for the premium reduction, complete the “Application for Treatment as an Assistance Eligible Individual” and return it along with your Election Form to the address indicated on your Election Form. If you currently have COBRA coverage based on reduction of hours that occurred during the eligibility period, you need only complete the “Request for Treatment as an Assistance Eligible Individual”, and mail it to the address listed on the enclosed Election Form.

You are only entitled to elect COBRA continuation coverage at this time if you lost group health plan coverage due to a reduction of hours during the period that begins with September 1, 2008, and ends with March 31, 2010, and subsequently experienced an involuntary termination on or after March 2, 2010. Under federal law, you have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan. Under these circumstances, premium assistance will begin on April 1 and can last up to 15 months, but no longer than your original COBRA eligibility period. There is no time limitation on requesting premium assistance, but you are not eligible for premium assistance if you are not eligible for COBRA.

Also, the paragraph starting with “If elected” (page two of the Notice) should reflect the following information:

If elected, COBRA continuation coverage will begin on April 1, 2010, and can last until (enter the last day of the 18-month period that started based on the original qualifying event)."

The Notice should be sent within 60 days of the termination of employment. The Office of Health Benefits is unable to reliably identify COBRA qualified beneficiaries based on a reduction of hours and must rely on employing agencies to do so.

These events can vary significantly based on individual circumstances. If you need assistance in determining whether you should send a second COBRA Election Notice based on a termination of employment following a reduction of hours, please e-mail your question to ohb@dhrm.virginia.gov and indicate "ARRA question" in the subject line.

Process

Requests for Treatment as an Assistance Eligible Individual should be sent to the Office of Health Benefits per the existing process. This will include Requests and COBRA Election Forms for individuals being offered an election opportunity due to a termination of employment following a reduction of hours. A full explanation of the voluntary or involuntary status of the termination should continue to be included per the existing process.