

January 2010

## Legal Alert/Executive Summary: Congress Extends COBRA Subsidy

### Overview

The American Recovery and Reinvestment Act of 2009 (“ARRA”), enacted on February 17, 2009, provided for a reduction of health insurance premiums under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). On December 19, 2009, President Obama signed into law the Department of Defense Appropriations Act, 2010 (the “Act”). Section 1010 of the Act extends the COBRA premium assistance program created under ARRA in two respects that will affect employer-sponsored group health plans:

First, the Act extends the COBRA premium assistance program to cover individuals who are involuntarily terminated from employment between September 1, 2008 and February 28, 2010, and who elect COBRA continuation coverage.

Second, the Act extends the maximum period during which assistance eligible individuals may pay reduced premiums from nine months to fifteen months.

Other provisions of the original ARRA program, including the amount of the subsidy, 65% of the eligible individual’s portion of the COBRA premium, remain the same. *This alert highlights transitional issues.*

*An update of Lawyers Alliance’s original legal alert on the COBRA subsidy program can be found at: [http://www.lawyersalliance.org/news\\_legal\\_alerts.php#4](http://www.lawyersalliance.org/news_legal_alerts.php#4).*

### Extension of Applicable Period

The Act extends the COBRA premium assistance program for two additional months, meaning that COBRA-eligible individuals who are involuntarily terminated from employment between January 1, 2010, and February 28, 2010, as well as those involuntarily terminated between September 1, 2008, and December 31, 2009, are eligible for COBRA premium assistance. Under the Act, it is no longer necessary that the individual both be involuntarily terminated and lose group medical coverage during the applicable period. Thus, for example, an individual who is involuntarily terminated on February 2, 2010 and has employer-provided coverage through the end of February will be eligible for the subsidy even though the loss of coverage does not occur until March 2010 (i.e., after the expiration of the eligibility period).

### Extension of Maximum Duration of Premium Assistance

The Act also extends the maximum duration of COBRA premium assistance for all eligible individuals from nine months to fifteen months. This extension applies to such individuals regardless of whether the involuntary termination occurred during the initial COBRA premium subsidy period or during the extended period provided under the Act. If COBRA continuation coverage lasts for more than fifteen months, eligible individuals will be required to pay the full premium amount for the remainder of COBRA continuation coverage. By February 17, 2010, Plan Administrators must notify all plan beneficiaries receiving reduced premiums on or after October 31, 2009, of the extended premium assistance under the Act.

### Transition Period

The Act also addresses premium assistance for individuals whose nine-month period of premium assistance under ARRA ended before the Act was signed. Any periods of coverage that start after the expiration of such individual's nine-month period of premium assistance under ARRA and before December 19, 2009 are together referred to as the "transition period." Plan Administrators must provide the *Premium Assistance Extension Notice* within the first 60 days of an individual's transition period (see "What notices must be distributed?" in the updated client alert).

### Retroactive Payment of Reduced Premiums

Under the Act, individuals who have exhausted the original nine month premium reduction period and dropped COBRA coverage during the transition period may elect to pay extension-related reduced premiums retroactively and maintain COBRA coverage. The retroactive premium payment must be made by the later of (i) February 17, 2010, (ii) 30 days from the date the *Premium Assistance Extension Notice* was provided, or (iii) the end of the otherwise applicable payment grace period.

### Refunds and Credits for Retroactive Premium Assistance Eligibility

Individuals who lost their subsidy and paid the full premium amount during the transition period may receive a credit for future months of coverage or a reimbursement of the overpayment, as authorized by the Act.

### Notices

The U.D. Department of Labor has updated COBRA Model Notices, which can be accessed at:

<http://www.dol.gov/ebsa/COBRAmodeInotice.html>

*Lawyers Alliance for New York is extremely grateful to Kelly Pointer, an attorney at Seyfarth Shaw LLP, for preparing this Legal Alert and assisting with the update.*

***This alert is meant to provide general information only, not legal advice. For additional information, please contact Judith Moldover at Lawyers Alliance for New York at 212-219-1800 ext.250.***