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Stimulus Bill Could Make Major COBRA Changes

The stimulus legislation currently being considered by Congress includes a subsidy for COBRA premiums for individuals who have been involuntarily terminated. If enacted, the COBRA premium subsidy will have a significant and immediate impact on the administration and cost of group health plans.

Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires group health plans to permit employees and certain dependents who lose coverage due to termination of employment to elect to continue that coverage for up to 18 months. These individuals, also known as "qualified beneficiaries," may be charged for the full cost of continued coverage plus a 2% administrative fee. Concerned that many individuals who lose their jobs do not elect COBRA because they cannot afford it, Congress has included provisions in the stimulus legislation that would provide subsidies towards the cost of COBRA coverage for individuals who have been involuntarily terminated.

The House has passed legislation including these COBRA provisions but, as of this date, the Senate has not. While the final outcome is not certain at this time, the current House and Senate bills contain many common provisions. Both would give plan sponsors very limited time to implement new procedures before the requirements would be effective.

Eligibility for Premium Subsidy

Only individuals who lose health coverage due to an *involuntary* termination of employment occurring between September 1, 2008 and December 31, 2009 and who elect COBRA coverage would be eligible for the premium subsidy. Individuals whose employment was terminated on or after September 1, 2008, but before enactment, would have 60 days in which to elect COBRA if they did not do so when initially eligible. If elected, COBRA coverage for these individuals would begin on the date of enactment (rather than the date of the initial qualifying event) and would not extend beyond the date it would have ended if COBRA had been elected initially.

> ***BUCK COMMENT.*** *Separate identification and tracking of subsidy-eligible individuals, as well as tracking for individuals who elect COBRA during the special election period, will be required.*

Amount of Premium Subsidy

Both the House and Senate bills include a 65% subsidy of the COBRA premium. The COBRA beneficiary would pay 35% of the COBRA premium to the employer and the employer would pay the remaining 65% of the premium and then take a tax credit against wage withholding and FICA payroll taxes. The subsidy would apply to COBRA premiums for both employees and dependents.

> ***BUCK COMMENT.*** *Because COBRA coverage is so expensive, those who elect it generally cannot obtain other insurance coverage, resulting in higher average claim costs than active employees – claims for COBRA beneficiaries typically average 150% of the COBRA premium. Although the premium subsidy may encourage healthier people to elect COBRA, this may result in a greater number of COBRA beneficiaries and a higher overall level of claims for plan sponsors. These costs could begin impacting plan budgets almost immediately.*
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> *If the employer pays a portion of the COBRA premium, as do many employers in connection with a reduction-in-force, the subsidy may not be available. Employers should consider this in their design of RIF programs in 2009.*

Duration of Premium Subsidy

Under the House bill, the premium subsidy would be available for twelve months, while under the Senate bill it would be available only for nine months. An individual would cease to be eligible for the subsidy on the date that he or she first becomes eligible for coverage under another group health plan or Medicare. For this purpose, a group health plan does not include health flexible spending accounts, health reimbursement accounts or employer maintained on-site clinics that primarily provide first-aid treatment. Qualified beneficiaries would be required to notify the group health plan when they become eligible for other group health coverage or Medicare.

> ***BUCK COMMENT.*** *Although eligibility for COBRA coverage ends only when a qualified beneficiary is actually enrolled in another health plan, eligibility for the premium subsidy would end when the individual becomes eligible for coverage under another group health plan.*

Option to Change Coverage

Under COBRA, qualified beneficiaries are generally offered the same coverage in which they were enrolled at the time of their qualifying event and cannot change their coverage until the next annual enrollment period. The current Senate bill would permit an employer to offer subsidy-eligible qualified beneficiaries the opportunity to elect a lower-cost health plan option offered to active employees.

> ***BUCK COMMENT.*** *It should be noted that the current provisions would not allow the subsidy to be used for retiree coverage.*

Effective Date of Subsidy

Under the House bill, the subsidy would be available starting on the first day of the month after enactment. Thus, if enacted in February, the subsidy would be available starting March 1. The Senate bill includes an additional month delay – if enacted in February, the subsidy would be available April 1.

Significantly Extended COBRA Coverage Period in House Bill

The House bill (but not the Senate bill) would significantly expand COBRA coverage for employees age 55 or older or who have at least ten years of service and who lose coverage due to termination of employment or a reduction in hours. Under the bill, the 18-month limitation on COBRA coverage for these individuals and their family members who are qualified beneficiaries would be eliminated, although coverage would cease upon the normal events under COBRA (e.g., the date the individual enrolls in Medicare or obtains other group coverage). This provision would be effective immediately upon enactment, and would include both current and future COBRA beneficiaries.

> ***BUCK COMMENT.*** *This provision would effectively require all employers subject to COBRA to offer a retiree medical program to pre-Medicare individuals. In addition to increased claims costs and administrative implications, it could subject employers to financial accounting requirements under FAS 106 or FAS 112.*

Communication and Disclosures

The bills would require that new notices be provided to certain qualified beneficiaries. The Department of Labor would be required to provide model language within 30 days after enactment. In addition, the employer would have to report to Treasury the number of employees who were involuntarily terminated and elected COBRA, as well as the amount the employer offset against its payroll or employee income tax withholding obligations. These reports would be submitted at the same time the employer deposits payroll and employee income taxes.

Conclusion

Since both the House and Senate stimulus bills include very similar requirements, it seems likely that final legislation will include at least a short-term COBRA premium subsidy. Whatever legislation is enacted, employers will have very little time to implement new administrative procedures and meet new notice requirements. Employers should review the implications of the potential requirements and discuss compliance issues with their COBRA administrators.

Careful consideration of these potential new rules should be given when planning any workforce reductions. Employers may also want to consider an audit or review of their COBRA administrators' ability to comply with the new requirements. Buck's consultants would be happy to assist you in reviewing the implications of these potential changes in the law.