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Date: April 13, 2009  
Reference No.:

Circular Letter No.: 600-020-09  
Distribution:

Special: All PEMHCA Employers

# Circular Letter

TO: ALL PEMHCA HEALTH BENEFITS OFFICERS AND ASSISTANT HEALTH BENEFITS OFFICERS

SUBJECT: COBRA Changes

This letter provides information and instructions for employer implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) modifications to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

The ARRA modified COBRA entitlements to reduce the cost of continuation of health care for specified individuals who lost group health care coverage due to an involuntary loss of employment. More information regarding the specifics of this aspect of the ARRA can be found in the attachments to this letter or on the Department of Labor website at:

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

In broad terms, the ARRA provides:

- Specified former CalPERS health members who lost coverage due to involuntary loss of employment (for reasons other than gross misconduct) on or after September 1, 2008
  - an opportunity for member premium cost reduction
  - an additional COBRA continuation coverage election opportunity for health benefits
- A reduction in premium cost to the member
  - eligible individuals pay only 35 percent of the COBRA health premium
  - employers subsidize the remaining 65 percent of COBRA health premium
  - employers recover this cost through their federal payroll tax payment
- The subsidy is only available for 9 months of COBRA coverage and is available for use on premium payments for coverage on or after March 1, 2009.

## **INDIVIDUAL COBRA NOTIFICATIONS**

### Retroactive Notices

CalPERS has notified all individuals who had a COBRA qualifying event on or after September 1, 2008, and provided them with the formal Notification (Attachment 1).

**Employers do not have to make these retroactive notifications.**

It should be noted these notifications did not include vision and dental coverage. If employers provide a vision or dental plan subject to COBRA, you may have additional notification to make. Please consult your legal counsel regarding other notifications.

### Future Notices

Until CalPERS can automate the notification process, CalPERS will continue to provide monthly notices to all individuals who have a COBRA qualifying event, to advise them of this subsidy opportunity. Employers should also provide each terminated employee with a copy of the attachments to this letter to fully ensure that all affected individuals are fully informed.

## **EMPLOYER ACTIONS**

### Determination of Involuntary Loss of Employment

Eligibility for the ARRA COBRA subsidy consideration is based on the character of discharge from the agency. Employers must determine if the discharge was involuntary and for reasons other than “gross misconduct.” This term is not defined in statute and must be determined locally. Since protest of the nature of discharge will be lodged against the employer, you must make this decision locally based on local legal advice.

### Domestic Partners and Same-Sex Marriages

If the former employee meets the qualifications for the premium reduction, then all family members who are qualified COBRA beneficiaries are eligible as well. However, due to federal regulations, domestic partners and same-sex spouses may not be eligible for the premium reduction because the employers’ ability to recover the subsidy payment relies upon an offset of that employer’s federal payroll taxes. Please consult your legal counsel for further guidance in this area.

### Enrollment

The enrollee must continue the same coverage which he or she had as an employee. The qualifying event date is the date the employee was involuntarily terminated from employment. The ARRA does not extend the period of COBRA continuation coverage beyond the original maximum required period (generally 18 months after the qualifying event).

## **PROCESS**

### Current COBRA Enrollees

Individuals will submit the “Request for Treatment as an Assistance Eligible Individual” form (Attachment C of the attached Notice) to their former employer from which their involuntary termination from employment occurred.

Individuals currently enrolled in COBRA may receive the subsidy only for premium costs related to COBRA coverage after March 1, 2009.

**Employers will:**

- Determine eligibility for individuals who meet the requirements for subsidy support
- Complete the “Request for Treatment as an Assistance Eligible Individual” form (Attachment C of the attached Notice), attesting to and approving the individual’s eligibility for subsidy support
- Forward a copy of the approved form to the appropriate health plan
- Provide the health plan with employer name, address, name of contact regarding eligibility and billing issues, and telephone number
- **Not** provide subsidy funding at this time. Employers will receive a bill from the health plans for the subsidy (see below)

**Not Currently Enrolled in COBRA**

Individuals who meet the definition of an Assistance Eligible Individual, and who either chose not to elect COBRA continuation coverage or who elected COBRA continuation coverage but subsequently discontinued that coverage, have an additional election opportunity. While the qualifying event date is the date the employee was involuntarily terminated from employment, health coverage will not be effective prior to March 1, 2009. This includes cases in which the individual may be willing to pay the full premium for months prior to March 1, 2009.

Individuals will submit the “COBRA Continuation Coverage Election” form (Attachment B of the attached Notice) to their former employer from which their involuntary termination from employment occurred. This election form may be used in lieu of the “CalPERS COBRA Continuation Coverage Election” form (HBD-85).

To receive the subsidy, individuals will submit the “Request for Treatment as an Assistance Eligible Individual” form (Attachment C of the attached Notice) to their former employer from which their involuntary termination from employment occurred.

**Employers will:**

- Determine eligibility for individuals who meet the requirements for subsidy support
- Enroll those eligible individuals in COBRA continuation coverage using ACES and the appropriate reason code
- Complete the “Request for Treatment as an Assistance Eligible Individual” form (Attachment C of the attached Notice), attesting to and approving the individual’s eligibility for subsidy support
- Forward a copy of the approved forms to the appropriate health plan
- Provide the health plan with employer name, address, name of contact regarding eligibility and billing issues, and telephone number
- **Not** provide subsidy funding at this time. Employers will receive a bill from the health plans for the subsidy (see below)

**SUBSIDY PAYMENT**

Upon receipt of enrollment and subsidy attestation documents, the health plan will bill the member for 35 percent of the COBRA health premium. The individual has 45 days in which to pay the bill. Upon receipt of payment, the health plan will bill the employer for the remaining 65 percent of the COBRA health premium. As a result, employers can anticipate retroactive billing from the health plans.

**Employers will:**

- **Not make a payment for the subsidy until a bill from the health plan is received**
- Pay subsidy **AS BILLED** within timeframes specified by the health plan
- Establish and maintain all records locally required under the ARRA to provide federal audit support of transactions (please discuss with your legal and accounting support)
- Recover the subsidy by taking a credit on their Internal Revenue Form 941, "Employer's Quarterly Federal Tax Return"

**The health plans will provide instructions on submitting payments. It is imperative that employers submit their payment only after receipt of a bill from the health plan. Do not send advance payments to the health plans**

We continue to work additional issues regarding this process, and will keep you informed as we fully develop this activity. We will provide additional guidance through future Circular Letters and through updates of our website at [www.calpers.ca.gov](http://www.calpers.ca.gov). We will update our website to include this circular letter and other links, such as to the Department of Labor and the Internal Revenue Service websites that contain additional information on ARRA. Please contact the CalPERS Employer Contact Center at 1-888-225-7377 for further assistance.

Sincerely,

Holly A. Fong, Chief  
Office of Employer & Member Health Services

Attachments

CalPERS COBRA ARRA Member Notification  
Summary of the COBRA Premium Reduction Provisions under ARRA  
COBRA Continuation Coverage Election Form  
Request for Treatment as an Assistance Eligible Individual Form  
Frequently Asked Questions  
Health Plan addresses