

COBRA Premium Subsidy ... on the Backs of Employers!

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By now, you've probably heard of the American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub.L. 111-5). ARRA is the federal law signed into law by President Obama in February 2009 that allows certain COBRA-eligible beneficiaries to receive a significant subsidy of their COBRA premium compliments of the federal government. If you missed the part about the COBRA subsidy, no one can blame you since the full text of the law is 407 pages! Regardless of it's breadth, ARRA is now law and we need to know how it will affect us.

For those of you who aren't familiar with COBRA, in short, it is the federal law that allows employees and their family members who have lost health coverage to continue their group coverage as long as their employer has 20 or more employees and provided they weren't terminated for "gross misconduct." While the stated purpose of ARRA is both noble and long overdue, the law itself is poorly drafted and misguided and, in my opinion, it creates far more problems than it solves. In a nutshell, here's what ARRA does:

1. It provides that certain individuals who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA, may be eligible to pay a reduced premium of 35% of their full COBRA premium for up to 9 months. This premium reduction is generally available for continuation coverage under the federal COBRA laws as well as for group health insurance under state continuation coverage laws (*i.e.*, state "mini-COBRA" laws).
2. It provides a second enrollment period for individuals who were offered COBRA coverage at some time from September 1, 2008 and February 16, 2009, but declined COBRA coverage when it was first offered or dropped coverage between those dates.

While it's hard to argue with any law that makes it more affordable for uninsured Americans to secure health care coverage for themselves and their families, here are some of the problems and issues I have with the law:

1. It puts the burden of paying the 65% subsidy on the backs of employers (or on the backs of insurance companies in mini-COBRA cases) who then have to recoup their out-of-pocket payment through a payroll tax credit on IRS Form 941, Employer's Quarterly Federal Tax Return.
2. The eligibility for the law's application is arbitrary and poorly applied. For example, an individual is only eligible if they (or their family member) was involuntarily terminated during specific time periods. What's more, the subsidy is not available to individuals who have other group coverage available to them, even if that other coverage is totally unaffordable or unrealistic. The other available coverage can be through a new employer, a spouse's plan, or through Medicare.

3. It permits adverse selection against insurance plans and raises the cost of providing health insurance to employers. Adverse selection occurs when someone buys insurance after the need arises. Because ARRA provides a second enrollment period to individuals who initially declined to continue their health insurance, these individuals get a “second bite at the apple” and are allowed, indeed incentivized and encouraged, to obtain coverage for a preexisting condition. This is true even though similarly situated active employees would not receive that same benefit. In other words, ARRA gives those individuals who are fortuitous enough to fall within the scope of its protection, an opportunity to circumvent the 63-day break in coverage rule under HIPAA. This allows them to obtain coverage for conditions that clearly preexist the effective date of the reinstated coverage even though the individual was uninsured when the condition first arose. While some may argue in favor of this protection, I view it as akin to requiring insurance companies to insure a burning building. Ultimately, this type of altruistic governmental intervention comes at a price which, in the end, is passed along to the employer group.
4. It irresponsibly spends taxpayer money by setting eligibility criteria tied to ridiculously high salary limits and by excluding certain truly needy individuals who may have voluntarily left a job for perfectly legitimate reasons. An eligible individual is entitled to take advantage of the subsidy as long as they earn less than \$125,000 per year (\$250,000 if married filing jointly)! Personally, I find it hard to believe this income threshold is appropriate for a government subsidy worth thousands of dollars.
5. It arbitrarily includes individuals who were covered under a COBRA-eligible group health plan, but unfairly excludes individuals who were covered under a small employer’s plan unless they happen to live in a state that has a mini-COBRA statute.
6. It only offers temporary relief to a serious health care problem that is nothing more than a band-aid solution. The real solution needs to focus on making the cost of the health care more affordable, not simply find a way to shift the exorbitant costs onto employers and taxpayers for the benefit of the few fortunate Americans who happen to meet the criteria of an “Assistance Eligible Individual.”

Although it’s my personal opinion that the COBRA assistance offered through the ARRA is an unfortunate misuse of taxpayer money that creates an undue burden on employers, there are certain individuals who will receive a very generous benefit under this law. In order to ensure the law is administered appropriately, it is important that we understand the specific requirements of the law and that we comply with what is required of us. If you have questions about the specifics of ARRA and how it will affect you and your company, I would suggest that you consult the Department of Labor’s website at www.dol.gov/COBRA. If you have questions about this article or would like to discuss your company’s insurance program, please feel free to contact me. If you would like to learn more about how WMI can meet your company’s insurance needs, please contact our Marketing Department at (800) 748-5340. I would also invite you to visit our website at www.westernmutualinsurance.com for other interesting articles and helpful information about group health insurance.