



February 2009

## Employee Benefits

### Alert



## Recent Legislation Requires Action by Group Health Plans and Cafeteria Plans

Several pieces of legislation affecting group health plans and cafeteria plans have been enacted in the last four months. Sponsors of group health and cafeteria plans need to take action to comply with new COBRA, special enrollment, and dependent coverage requirements.

### COBRA Subsidy

The American Recovery Reinvestment Act of 2009 (the “stimulus bill”), signed into law on Feb. 17, includes significant changes to COBRA continuation coverage rules, including a partial employer subsidy of COBRA premiums for involuntarily terminated employees. The stimulus bill also allows plans to offer COBRA beneficiaries a lower cost health plan coverage option.

Under the stimulus bill, individuals who become eligible for and elect COBRA between Sept. 1, 2008, and Dec. 31, 2009, due to an involuntary termination of employment are eligible for a COBRA premium reduction. A group health plan can only require such COBRA beneficiaries to pay 35 percent of the plan’s COBRA premium. The employer must pay the remaining 65 percent but may claim federal payroll tax credit to recover the subsidy. Eligible individuals who declined COBRA between Sept. 1, 2008 and Feb. 17, 2009 must be allowed a second COBRA election opportunity.

The subsidy ends as of the *earliest* of:

- The date the individual becomes eligible for coverage under another group health plan;
- Nine months after the subsidy takes effect;

- The end of the maximum COBRA coverage period required by law; or
- For an individual who elects COBRA during the special election period, the end of the maximum COBRA coverage period that would have applied if the individual had elected COBRA coverage when first entitled to do so.

COBRA notices must be modified to describe the subsidy, the availability of any lower cost health plan options, the obligation of a qualified beneficiary to notify the plan of eligibility under another plan, and the penalty for failure to provide the notice. The notice must be given to new COBRA qualified beneficiaries and to individuals entitled to the special election period described above. The notice must be provided by April 18, 2009. The Department of Labor will issue a model notice.

### New Special Enrollment Rights

The Children’s Health Insurance Program Reauthorization Act of 2009 signed into law by President Obama this month also requires prompt action by group health and cafeteria plans.

The new law creates special health plan enrollment rights for employee and their dependents upon:

- Loss of eligibility for Medicaid or State Children’s Health Insurance Program (SCHIP) coverage; or
- Becoming eligible for premium assistance under a new optional state Medicaid or SCHIP program that would pay the employee’s portion of the health insurance premium.

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Employees and dependents will have 60 days to request special enrollment in group health plan coverage following one of the above events. The 60-day enrollment period is twice as long as the normal 30-day HIPAA special enrollment period.

### Dependent Coverage: Michelle's Law

Michelle's Law requires group health plans offering dependent coverage based on student status to extend coverage to college students who would otherwise lose coverage due to a medically necessary leave of absence. Plans must comply with Michelle's Law as of the first plan year beginning on or after Oct. 9, 2009. Accordingly, calendar year plans must comply as of Jan. 1, 2010.

Many group health plans offer coverage to participants' dependent children based on whether the children are enrolled in a post-secondary education institution. Such dependents can lose eligibility for coverage if a medical condition forces them to take a leave of absence from school. Michelle's Law prevents group health plans from dropping college students who take medically necessary leaves of absence. Coverage must continue for one year after the leave of absence began or until the date coverage would have otherwise terminated under the plan's terms, if earlier. Any notice about certification of student status for group health plan coverage must describe Michelle's Law.

### Action Required

Plan sponsors must take the following action to comply with the new legislation.

- Amend group health plans and cafeteria plans to allow the new special enrollment rights (by April 1, 2009); COBRA rights, and Michelle's Law coverage rules;
  - Revise summary plan descriptions and/or issue summaries of material modifications as necessary to describe the new rules;
  - Update enrollment forms;
  - Update certifications of student status;
  - Adjust special enrollment procedures and train administrative staff; and
  - Revise special enrollment notices.
- If you need help interpreting the new requirements or need assistance preparing plan amendments, summary plan descriptions, notices, and forms, please contact any member of the Williams Mullen Employee Benefits Group.*
- Revise COBRA notices;
  - Provide second COBRA election opportunity notices to eligible individuals who declined COBRA between Sept. 1, 2008 and Feb. 17, 2009;
  - Check with third party administrator and/or insurance carrier to confirm that plan administration complies or will comply with new rules;

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