

# EMPLOYEE BENEFIT ADVISOR

Quarterly Newsletter

January 2010

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## NEWS & VIEWS

### President Signs COBRA Subsidy Extension Legislation

#### Legislation Details

The extension legislation provides for the following benefits:

- Extends the premium subsidy eligibility period by two months, so that it would end on February 28, 2010, rather than December 31, 2009.
- Extends the period of the 65 percent COBRA subsidy from nine months to 15 months.
- Establishes a transition period that applies to individuals who lost subsidies before the effective date of the Act because they received the maximum number of months of subsidies under the original subsidy provisions.
- Establishes new notification requirements by group health plans or other entities.
- Clarifies that eligibility and notice requirements for the subsidy are based on eligibility for COBRA due to loss of coverage because of qualifying event (involuntary termination of employment), both of which must occur during the eligibility period.
- Becomes effective as if included in the original COBRA subsidy provisions of the American Recovery and Reinvestment Act.

The action allows workers who have used up their original nine months eligibility to receive six more months of the 65 percent subsidy, and those who did not choose to continue with COBRA coverage once they timed out to rejoin the system, pay premiums retroactively and receive the subsidy and maintain COBRA continuation. Workers who are involuntarily terminated through February 28, 2010, will not qualify unless Congress takes further action.

These new changes in the premium subsidy program will also apply to those who are not eligible for COBRA, but instead are eligible only for state continuation coverage.

The original federal subsidy, included as part of the American Recovery and Reinvestment Act, provided a 65 percent premium subsidy starting in March to those who involuntarily lost a job in September 2008 or afterward, and was only scheduled to be available to workers who lost their jobs through the end of this year.

The unemployed who started receiving the subsidy when it was first available in March saw it lapse on December 1, and employees losing their jobs after December 31 were not eligible for the federal help without this Congressional action extending the benefits.

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## Further Evaluation Under Way

Evaluation of the extension and all the requirements, time frames, and details about retroactive premium payments is under way and more information will be coming as soon as it is available.

## LEGISLATIVE INSIGHT

### Health and Welfare Plans: 2009-10 Compliance Update

A number of legislative changes affecting health and welfare plans require implementation in 2009 or 2010. This Legislative Brief provides a summary of major developments. Employers should review their benefit programs and documents to determine whether they are compliant with the new laws and make amendments as necessary.

#### GENETIC INFORMATION NONDISCRIMINATION

The Genetic Information Nondiscrimination Act of 2008 ("GINA") provides that group health plans and insurance issuers may not:

- adjust group premium or contribution amounts on the basis of genetic information;
- request or require individuals (or their family members) to undergo a genetic test (with limited exceptions such as for determinations regarding payment based on medical appropriateness); and
- request, require or purchase genetic information prior to or in connection with enrollment, or at any time for underwriting purposes.

Further, GINA amends the definition of protected health information ("PHI") under the HIPAA Privacy Rule to include genetic information.

Recently published GINA regulations clarify that GINA's prohibition on collecting genetic information prior to or in connection with enrollment, or for underwriting purposes, will affect the use of Health Risk Assessments ("HRAs"). HRAs are tools commonly used by wellness and disease management programs. Pursuant to the regulations, group health plans may not:

- provide a reward or incentive to an individual for completing an HRA that requests genetic information, such as family medical history; or
- request genetic information as part of an HRA that must be completed before enrollment in the plan or eligibility for additional benefits under the plan, such as a disease management program.

GINA's rules applicable to group health plans and health insurance issuers are effective for plan years beginning

after **May 21, 2009** (January 1, 2010, for calendar year plans).

#### NEW HIPAA RULES

The American Recovery and Reinvestment Act of 2009 made a number of significant changes to the Privacy and Security provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). These changes affect Covered Entities and Business Associates (as defined by the Privacy and Security Rules) and have varying effective dates.

Under the new rules, Covered Entities now have an affirmative obligation to notify individuals if their "unsecured PHI" is breached. Business Associates must notify the applicable Covered Entity of a breach involving that Covered Entity's unsecured PHI. Unsecured PHI is PHI that is not secured through the use of a technology or methodology specified by the Department of Health and Human Services. HHS has specified that encryption and destruction are the two methods available for securing PHI. The breach notification rules were effective **September 23, 2009**.

In addition, HIPAA has been expanded to impose additional obligations on Business Associates that require revisions to any Business Associate Agreements. Business Associates are now directly subject to many provisions of the Privacy and Security Rules, rather than being governed merely by agreements with Covered Entities. Other changes include changes to the "minimum necessary" standard, restrictions on disclosures, expanded individual rights, and increased penalties for violations. Most of these changes are effective **February 17, 2010**.

#### MENTAL HEALTH PARITY

The Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") imposes additional requirements on group health plans that offer mental health and substance abuse benefits. Under current law, plans may not impose lower annual and lifetime limits on mental health coverage than those imposed on medical and surgical benefits. The MHPAEA expands the parity requirements to prohibit plans from doing the following:

- imposing higher copayments, deductibles or out-of-pocket limits on mental health and substance abuse treatment benefits than on medical and surgical benefits;
- placing more restrictive limits on the number of covered office visits, days of inpatient coverage or the duration or scope of treatments available for mental health and substance abuse treatment benefits than those available for other types of medical treatment; and
- excluding out-of-network treatment for mental health and substance abuse treatment benefits if out-of-network benefits are providing for medical and surgical benefits.

Employers that provide mental health or substance abuse benefits must review their benefit plans to ensure they are compliant with the MHPAEA. The MHPAEA does not apply

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to employers with 50 or fewer employees during the prior plan year. There is also a limited exception for employers for whom compliance would cause a demonstrated financial hardship. The MHPAEA is effective for plan years beginning after **October 3, 2009 (January 1, 2010, for calendar year plans)**.

## MICHELLE'S LAW

Michelle's Law allows seriously ill college students, who are covered dependents under health plans, to continue coverage for up to one year while on medically necessary leaves of absence. The leave must be medically necessary as certified by a physician, and the change in enrollment must commence while the dependent is suffering from a serious illness or injury and must cause the dependent to lose student status.

Under the law, a dependent child is entitled to the same level of benefits during a medically necessary leave of absence as the child had before taking the leave. Further, if any changes are made to the health plan during the leave, the child remains eligible for the changed coverage in the same manner as would have applied if the changed coverage had been the previous coverage, so long as the changed coverage remains available to other dependent children under the plan.

The law requires group health plans to provide notice of the requirements of Michelle's Law, in language understandable to the typical plan participant, along with any notice regarding a requirement for certifying student status for plan coverage.

Michelle's Law is effective for plan years beginning on or after **October 9, 2009**. Calendar year plans must comply beginning **January 1, 2010**.

## BENEFITS FOR MILITARY EMPLOYEES AND FAMILIES

The Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") was enacted on June 17, 2008. The HEART Act provided a special rule allowing "qualified reservist distributions" ("QRDs") of unused amounts in a health FSA to reservists called to active duty. Under the existing rules for health FSAs, distributions could only be made to reimburse substantiated medical expenses, and any funds left unspent at the end of the plan year would be lost. This special rule allows reservists to make a distribution before leaving for active duty so as not to lose those savings.

Permitting QRDs is optional for employers. Employers that want to allow QRDs from their health FSAs must amend their plans. Prospective amendments may be made at any time. A transition rule allows plans to be amended effective retroactively to provide for QRDs prior to January 1, 2010. If the amendment is adopted by **December 31, 2009**, it can apply retroactively to an employee who was called to active duty after June 17, 2008. However, the employee must request the distribution by the last day of the plan year in which the call to active duty occurred.

In addition, amendments to the Family and Medical Leave Act ("FMLA") that were adopted and effective on **October 28, 2009** expand leave benefits for military families. Eligible military family members may take up to 12 weeks of "qualifying exigency leave" for purposes of things like preparing for a short-notice deployment, arranging for child care, making financial or legal arrangements, and resting and recuperating. Pursuant to the FMLA amendments, this leave is available to eligible families of any member of the Armed Forces who is on "covered active duty" in a foreign country, not just those in the Reserves or National Guard. The FMLA amendments also expand the 26-week military caregiver leave to the families of veterans with serious injuries or illnesses as well as active members.

Employers subject to the FMLA should review their policies and procedures regarding military leave to ensure that they are in compliance with the new requirements as soon as possible, and make revisions as necessary. Employers should also communicate the changes to their employees and expect that more employees will be entitled to leave. The Department of Labor is expected to issue an updated FMLA notice to include the changes.

## MEDICARE REPORTING RULES

The Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") added new mandatory reporting requirements with respect to Medicare beneficiaries who have coverage under group health plans as well as for Medicare beneficiaries who receive settlements, judgments, awards or other payment from liability insurance (including self-insurance), no-fault insurance, or workers' compensation. The purpose of the new reporting rules is to enable Medicare to correctly pay for the health insurance benefits of Medicare beneficiaries by determining whether Medicare or other insurance is required to pay first.

In general, employers will not have any reporting obligations if they have an insurer or third-party administrator to assume the role of responsible reporting entity ("RRE"). Employers with self-insured benefit programs will have to register as an RRE and will remain responsible for reporting. Reporting for group health plans is scheduled to begin **October 1, 2009**. Reporting for self-insured liability arrangements such as workers' compensation is scheduled to begin **July 1, 2010**.

## EXCISE TAX REPORTING REQUIREMENTS

Group health plans are responsible for compliance with a number of federal laws, such as COBRA, HIPAA Portability, GINA, MHPAEA, Michelle's Law and the Newborns' and Mothers' Health Protection Act ("NMHPA"). If a group health plan does not comply with these requirements, the employer maintaining the plan is subject to an excise tax. Employers are also subject to an excise tax if they do not satisfy comparable contribution rules for health savings accounts ("HSAs") and Archer medical savings accounts ("MSAs"). The Internal Revenue Service (IRS) has issued final regulations on reporting and paying the applicable excise tax, which are effective **January 1, 2010**.

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Excise taxes must be reported on IRS Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code." The due date for the filing and payment of the tax varies depending on the rules violated and the responsible entity. The excise tax may be waived if the failure is not discovered when exercising reasonable diligence, or is due to reasonable cause and is timely corrected. A failure is corrected if it is retroactively undone to the extent possible and the affected beneficiary is placed in a financial position as good as he or she would have been in if the failure had not occurred.

## COBRA SUBSIDY

ARRA provided a 65 percent COBRA premium subsidy for individuals losing health coverage due to involuntary termination of employment between September 1, 2008, and December 31, 2009. The subsidy is generally provided by the employer sponsoring the plan, which is reimbursed through payroll tax offsets. Congress is considering legislative proposals to extend the subsidy to individuals who lose health coverage because of involuntary terminations that occur after December 31, 2009, and to extend the premium subsidy period beyond 9 months. If such a proposal is signed into law, employers will likely have to continue administering COBRA benefits in accordance with ARRA.

## CAFETERIA PLAN REGULATIONS

The Internal Revenue Service issued proposed regulations regarding cafeteria plans in August 2007. These regulations provide guidance regarding written plan document requirements, reimbursable expenses, nondiscrimination testing and timing of reimbursements. Although the regulations are not final, employers may rely on them in their good faith compliance efforts. Final regulations have been expected for some time, but have not yet been released. No guidance has been provided on when regulations will be finalized. In anticipation of final regulations, employers may want to review their current plan documents and compare them with the proposed regulations.

*This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.*

## RX CORNER

Be a Wise  
Health Care  
Consumer

10 Ways to Reduce your Prescription Drug Costs



Learn to become a smart shopper when it comes to drug therapy. You can cut costs by up to 90 percent by

becoming an aggressive consumer. Use the same buying techniques that you routinely use when shopping for other goods and services – check out pharmacy Web sites on the internet to obtain drug information and prices.

As more individuals begin comparison shopping for drugs, more retailers will compete to win their business, which will drive prices lower. Use the following smart-shopping tools to become a savvy consumer.

1. **Price Comparisons.** Drug prices are not uniform; you can save a considerable amount of money by comparison shopping.
2. **Drug Substitution.** When your doctor prescribes a drug, ask him or her if a cheaper alternative is available.
3. **Bulk Buying.** As you know from visiting your local Sam's Club® or Costco®, it's cheaper to buy in bulk. The same is true for drugs. Buying higher quantities at a time generally reduces the per dose cost of drugs. This is especially true for generics purchased by mail.
4. **Mail-Order Pharmacies.** Mail-order and Internet pharmacies offer the best deals on prescription drugs for patients with chronic conditions.
5. **Pill-Splitting.** Many prescription drugs are available at increased dosages for the same or similar costs as smaller dosages. When physicians prescribe half as many higher-strength pills and have the patient split them to achieve the desired dosage, the cost of certain medications can be reduced as much as 50 percent. Make sure to check with your doctor, however; splitting pills renders some medications ineffective.
6. **Generic Medications.** Generic medications work as well as brand name drugs and can cost 20 to 80 percent less.
7. **Over-the-Counter Drugs (OTC).** Ask your doctor if an OTC drug will do just as well as a prescription drug. Today there are over 100,000 different OTC drugs and more than 600 of them were previously only available by prescription.
8. **Pharmaceutical Company Assistance Programs/State Drug Assistance Programs.** Many drug companies and states offer drug assistance programs for the elderly, low-income patients and /or people with disabilities.
9. **Medicare Drug Plans.** Seniors can combine smart shopping techniques with the Medicare drug plan. All the information you need is available at [www.Medicare.gov](http://www.Medicare.gov).
10. **Samples.** Drug companies give thousands of samples to doctors every year. Your doctor may be able to provide you with weeks' worth of the medication at no charge. If you discover over time that the medication isn't working, you won't have wasted your money.

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*This brochure is for informational purposes only and is not intended to replace the advice of an insurance professional.*

## BLUE CROSS UPDATES & CHANGES

### Updates made to Specialty Pharmacy Program

Blue Cross just added a number of drugs to the specialty drug list. Specialty drugs are prescription medications that require special handling, administration or monitoring. These drugs are used to treat a number of conditions.

Drug	Indication
Extavia®	Multiple Sclerosis
Samsca™	Hyponatremia
Sabril®	Infantile spasms; Refractory complex partial seizures*
Tyvaso™	Pulmonary arterial hypertension*

\*These drugs have limited distribution and are currently not available through Option Care. These drugs may be ordered through Medco's specialty pharmacy, Accredo.

Specialty drugs are prescription medications that require special handling, administration or monitoring. These drugs are used to treat complex, chronic and often costly conditions, including asthma, cancer, rheumatoid arthritis, osteoporosis and others.

## PROPERTY & CASUALTY

### Liability Exposures in a Tough Economy

An economic downturn often strikes worry among business owners and their employees across the country in virtually every industry. Even companies that escape tough times relatively unharmed could still fall into the trap of uninsured risks long term, here are some tips to keep your business prospering into the next economic cycle.

#### The Chain Reaction

It's no secret that the financial security of your business hinges on that of your partners, vendors and suppliers and that in tough times, everyone is looking for a way to cut costs.

The best thing you can do in a tough economic climate is avoid relying on the insurance coverage of your business partners to protect your assets or protect against third-party liability claims. If you are a distributor, for example, you may be held

financially responsible for a claim filed against your manufacturer after it goes out of business.

Ultimately, in order to protect your company, it may be a smart long-term investment to expand your coverage limits. Many businesses are trying to cut costs by lowering their coverage, but you do not want to pay out of pocket for an expensive claim laid on your shoulders because of your supplier's shortcomings.

#### Shaky Contracts Make for Shaky Business

In a turbulent economic climate, it is more important than ever to enter into good contracts. They should clearly outline the obligation of each party and discuss dispute resolution policies so in the event something goes wrong, you avoid a messy and expensive disagreement.

It is never a good business decision to sign into a contract hastily, but in a difficult economic time, be sure to look into all the risks and legal ramifications. Small companies who partner with larger companies often get strong-armed into making decisions they are not completely comfortable with.

#### Be Cautious With Change

For many businesses, change is a smart solution to an economic crisis. It allows you to bring in revenue by exploring new customer bases and offering additional products or services. While expanding in either of these ways can revolutionize your business and keep you afloat in tough times, it could also expose you to additional liability you had not dealt with before.

When you begin to step out of your ordinary line of products or services, you will inevitably face a learning curve, which puts you at a larger risk of facing product liability claims. You may want to consider purchasing additional lines of coverage to protect yourself, as your surplus lines insurance policy may only cover claims arising from one particular product.

By the same token, shifting or expanding your customer base may open you up to class action lawsuits. You are not changing your product or service, but you are tapping into another market that may react differently to product failure. This is another instance where you should ensure your potential liabilities resulting from a change in your business are appropriately covered.

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## LIVE WELL, WORK WELL

### Cold, Flu or H1N1?

#### *How to spot the difference*

With all the media attention on H1N1, it's easy to assume swine flu at the first sign of sickness. But your symptoms may be telling you a different story. Though the common cold, seasonal flu and H1N1 flu share several symptoms, there are points of differentiation that will help you identify which it is and seek proper treatment.

#### **Common Cold**

Typically, symptoms of the common cold come on gradually, and may start with a sore throat or irritated sinuses. The most common symptoms of a cold are nasal congestion, sneezing and runny nose. Symptoms can also include a cough, mild headache and minor body aches. Young children may get a low-grade fever as well, but a fever in older children or adults typically indicates the flu. Symptoms generally go away within a week.

#### **Seasonal Flu**

Unlike the common cold, flu symptoms usually come on suddenly and vigorously, often starting with a high-grade fever, headache, body aches and fatigue. In addition, flu symptoms can include a dry cough and sore throat, and sometimes a runny or stuffy nose. Symptoms are generally more severe than with a cold. Flu symptoms tend to gradually improve after two to five days, but can last for a week or more.

#### **H1N1 Influenza**

H1N1 flu symptoms are very similar to symptoms of the seasonal flu. But while a fever is common for seasonal flu, it is even more prevalent in H1N1 flu cases. In addition, those suffering from H1N1 flu are more likely to experience nausea, vomiting and diarrhea than with seasonal flu.

#### **Prevention**

There are general practices that can help you avoid getting sick from any of the three. These include frequent hand washing, sanitizing commonly touched surfaces, and avoiding touching your eyes, nose and mouth. A good flu prevention strategy is to get both the seasonal and H1N1 flu vaccine. If you are sick, cough and sneeze into your elbow to prevent spreading germs to others.

#### **Treatment**

For the doctor

Over-the-

be treating either



common cold, a visit is usually unnecessary. Over-the-counter medications can be effective in treating a variety of the

flu, a doctor can prescribe anti-viral drugs that can help decrease the severity and length of symptoms.

### *Did you know...?*

Whether you have a cold or the flu, there are home remedies that can help you recover sooner. Drinking warm liquids or taking steamy showers can help soothe a sore throat and ease nasal congestion. And make sure to get plenty of rest so your body can focus its energy on fighting off the illness.