

EMPLOYEE BENEFIT ADVISOR

Quarterly Newsletter

April 2009

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As always we welcome your comments and suggestions regarding this issue of Employee Benefit Advisor. For more information on this publication or on articles or information contained within this publication, please contact your Sales Representative, Account Manager or visit the Mourad Agency web site at www.aemourad.com.

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NEWS & VIEWS

Stimulus Act Changes to COBRA Coverage

An area that requires further clarification

The Act did not directly address how the 2% COBRA Administration Fee should be handled and who is responsible for payment. At this time, the industry observers believe that the COBRA premium includes the 2% administration fee, meaning 102% of plan cost. Therefore the federal subsidy is 65% of 102% and the individual pays 35% of 102%.

The Act defines the COBRA subsidy as follows:

- The COBRA subsidy is 65% of the COBRA premium for up to 9 months. Individuals pay 35% of the insurance premium. Employers initially pay 65% of the premium and then are reimbursed via Federal payroll tax reporting (form 941) once premiums are received from COBRA participants that have the subsidy. The IRS has updated the 941 form to include 12a and 12b to report the subsidy information. Also keep in mind that employers can file Form 941c to receive the tax credit.
- COBRA subsidies are for individuals that meet the following eligibility criteria:
 - Were participating in employer sponsored group coverage and experience an involuntary loss of coverage between 9/1/2008 and 12/31/2009.
 - Not enrolled in a group health plan and are not eligible for other coverage (e.g., spouse's health plan or the health plan of a new employer).
 - Full subsidy amount if individual income is less than \$125,000 per year or family income is less than \$250,000 per year for 2009.
 - The employer exists and continues to offer group coverage.
 - Their COBRA premium is not paid by the prior employer, new employer, or another source. Therefore, the subsidy does not provide reimbursement for employer-paid COBRA premiums.
 - The subsidy is not retroactive and will only apply from the date of the law's passage (2/17/2009) going forward. Generally this means premiums for 3/1/2009. If qualifiers opted for COBRA and began paying premiums before the effective date of the Act, they will not get a credit or refund for the COBRA premiums paid prior to the first premium due after 2/17/2009 (again, generally this is 3/1/2009).
 - Those who meet the eligibility criteria and did not elect COBRA coverage or elected and then terminated COBRA coverage will be allowed a 60-day special election period with a start date of

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3/1/2009 (or the first day of the monthly health plan after 2/17/2009). The special election does not include a certificate of coverage. Special election notices must be sent within 60 days of the Act was signed (4/19/2009), although it is advised to send these as soon as possible. The individual then has 60 days to elect and another 45 days after their election to pay their premium(s).

- Those who meet the eligibility criteria and currently have COBRA coverage will be able to begin paying 35% of their COBRA premium as of 3/1/2009 (or the first day of the monthly health plan after 2/17/2009). Premiums collected at the higher rate will be applied to future payments.
- COBRA coverage will not be extended further than the original 18 months from the original COBRA start date.
- New COBRA qualifiers between 3/1/2009 and 12/31/2009 need to be notified of the subsidy in their qualifying event letter and may elect the subsidy if they meet the eligibility criteria.
- The subsidy is available for all group health plans currently available under COBRA with the exception of Flexible Spending Account.
- Individuals may waive the right to the premium subsidy for all periods of coverage. This waiver is permanent and the individual must provide written notice to the employer.

3/19/2009 through 4/19/2009: This is the timeframe to notify prior qualifiers and current COBRA participants paying full premiums. Individuals have 60 days from the date of the special election notification to elect and then have an additional 45 days after their election to pay their premium(s) back to 3/1/2009 (unless your health plan starts on a day other than the 1st of the month).

New I-9 Form Now Required

Beginning April 3, 2009, all employers are required to use the new I-9 form to verify employment eligibility. The new form contains three important changes:

- 1) All documents that are presented for verification must be current.
- 2) Eliminates expired employment authorization documents (Forms I-688, I-688A, and I-688B) from List A.
- 3) Adds two documents to List A: a Temporary I-551 printed notation on a machine-readable immigrant visa; and a passport from the Federated States of Micronesia and the Republic of the Marshall Islands with a valid Form I-94 or I-94A.

To avoid monetary penalties, employers should only accept unexpired documents that are listed on the new Form I-9. If re-verification is required, employers should only accept documents listed on the new I-9

LEGISLATIVE INSIGHT

The Genetic Information Nondiscrimination Act of 2008

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act of 2008 ("GINA"). GINA provides broad protections in employment and health benefits against the improper collection, use or disclosure of employees' genetic information, in part by amending a number of major laws such as ERISA, HIPAA and the IRC. The employment provisions of GINA become effective 18 months after the date of enactment (i.e., November 21, 2009), while the provisions targeted at insurers go into effect for plan years beginning one year after the date of enactment (i.e., the effective date for calendar year plans is January 1, 2010). The EEOC and other applicable federal agencies must issue clarifying regulations within the year.

What is Genetic Information?

GINA defines "genetic information" to mean information about:

- (i) an individual's genetic tests,
- (ii) the genetic tests of family members of the individual, and
- (iii) the manifestation of a disease or disorder in family members of the individual.

Genetic information also includes any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual. The genetic information of any fetus carried by a pregnant woman and the genetic information of any embryo legally held by an individual or family member using assisted reproductive technology are also considered genetic information protected by GINA. The term does not include information about the sex or age of any individual.

Impact on Health Plans (Title I of GINA)

Title I of GINA deals with genetic nondiscrimination in health insurance. Title I regulates group health plans, including small group health plans, health insurance issuers offering health insurance coverage in the individual market, non-federal governmental plans and issuers of Medicare supplemental policies. Generally,

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Title I amends a number of major laws to prohibit a group health plan from adjusting premium or contribution amounts for a group on the basis of genetic information. A group health plan is also prohibited from requesting or requiring individuals (or their family members) to undergo a genetic test. Further, GINA makes changes to the HIPAA portability rules in ERISA, the PHSA and the IRC, adding new provisions regarding genetic information, as well as provisions for insurance issuers in the individual market. Health insurance issuers in the individual market, as well as issuers of Medicare supplemental policies, are prohibited from establishing eligibility rules based on genetic information, and from imposing a pre-existing condition exclusion on the basis of genetic information. GINA requires amendments to the HIPAA privacy regulations by prohibiting the use or disclosure by a group health plan, health insurance issuer or issuer of a Medicare supplemental policy of genetic information about an individual for underwriting purposes. For purposes of HIPAA, genetic information must be treated as health information.

Impact on Employers (Title II of GINA)

Title II of GINA outlines the prohibition of employment discrimination on the basis of genetic information. Employers, employment agencies, labor organizations and joint labor-management committees are prohibited from discriminating against an employee, individual or member based on genetic information. Employers may not fail or refuse to hire, or discharge, any employee, or otherwise discriminate against any employee with respect to the compensation, terms, conditions or privileges of employment because of genetic information. Employment agencies may not fail or refuse to refer for employment, or otherwise discriminate against any individual because of genetic information. A labor organization may not exclude or expel from membership, or otherwise discriminate against, any member because of genetic information. Individuals also may not be discriminated against because of genetic information with respect to admission or employment in any program established to provide training or apprenticeship.

Employers, employment agencies, labor organization and joint labor-management committees are also prohibited from requesting, requiring or purchasing genetic information about an individual or family member except where the entity:

- 1) inadvertently requests or requires family medical history of the individual or family member,
- 2) offers health or genetic services, the individual provides specific authorization and individual information is not released to others,

- 3) requests or requires family medical history to comply with the federal FMLA or state family and medical leave laws,
- 4) purchases documents that are commercially and publicly available that include family medical history,
- 5) uses the information for genetic monitoring of the biological effects of toxic substances in the workplace if certain detailed conditions are met, or
- 6) conducts DNA analysis for law enforcement purposes as a forensic laboratory and requires such analysis for quality control.

Finally, genetic information about an individual must be maintained separately and treated as a confidential medical record. Genetic information about an individual may be disclosed to the individual, an occupational or other health researcher, in response to a court order, to government officials investigating compliance, for FMLA leave purposes, or to a public health agency regarding a contagious disease presenting an imminent hazard only when certain specifically outlined conditions are met.

Actions to Take Now

The law does not go into effect until at least May 21, 2009, depending on whether Title I or Title II applies. But there are certain things that entities subject to GINA can begin to do now. First, get familiar with the new law and its specific requirements. Evaluate how related state laws may interact with GINA. Review applicable employment policies, practices and paperwork to be sure the genetic information issue is properly addressed. Review any health plan to be sure it is not inappropriately requesting or receiving genetic information, and evaluate whether any changes are necessary regarding the administration of benefits. Take steps to ensure that any genetic information is treated with strict confidentiality, as under HIPAA. Train managers and supervisors so that they do not unwittingly violate GINA by, for example, using genetic information in employment-related decisions. Finally, watch for the issuance of the upcoming regulations.

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RX CORNER

Generic Versions of Imitrex[®] and Kepra[®] Now Available

The Food and Drug Administration (FDA) has now approved sumatriptan succinate as the generic version (or equivalent) or Imitrex[®] tablets (used for the treatment of migraines) and has also approved levetiracetam as the generic version (or equivalent) of Kepra (used to treat the frequency of epileptic seizures). Because generic drugs typically cost less than their brand-name counterparts, users could pay less for sumatriptan succinate. Specific savings depends on your prescription drug plan. The FDA has indicated that generic versions like sumatriptan succinate can be expected to work equally as well as the original brand-name drugs. Sumatriptan succinate and levetiracetam have been tested to ensure that they have the same active ingredient, dosage form, quality, strength, and purity as Imitrex tablets.

Flexible Blue Dental Plus

- Annual maximum of \$800
- 90-day waiting period for Class I and Class II services

Rates for these new products are determined by the members enrolled on the contract as of the contract effective date. For example a family of four will be rated on each individuals age and plan type, these rates are then added together to get the "total family" rate. Rates are guaranteed for 12 months from the effective date of the contract. Trend increases in rates will occur on the anniversary date of the contract.

Application will ask general health questions to coordinate with disease/care management programs. Participation in these programs can lead to reduced copayments for services.

Please contact your sales representative for further details.

BLUE CROSS UPDATES & CHANGES

Blue Cross Blue Shield MyBlue Individual Plan

The Blues are launching a suite of revamped MyBlue products that provide options for everyone at every stage of life.

These updated individual "Plus" products will allow members to rest easy knowing that BCBS has a health plan for them – no matter what their situation.

The following individual products open for enrollment from beginning March 30th, 2009 with an April 15th, 2009 effective date.

Individual Care Blue Plus

- A comprehensive medical plan for individuals under 65
- 70% Coinsurance after Deductible
- \$1,000 individual/\$2,000 family deductible
- \$2,500 individual/\$5,000 family coinsurance maximum
- Maternity not available (pre and post natal care)
- Includes preventable vision and dental benefits

Flexible Blue II (\$1,500, \$2,500, \$5,000 deductible options)

- A comprehensive medical plan combined with an HSA that gives the member freedom to choose how and when they use their savings
- Optional maternity rider available for the \$1,500 and the \$2,500 deductible plans

LIVE WELL, WORK WELL

Energy Drinks: Help or Harm?

In recent years, the younger generation has taken to gulping down an energy drink rather than old-fashioned coffee. However, several studies on energy drinks have shown that strong doses of caffeine increase the risk of hypertension, heart palpitations, headaches, insomnia, and can incite irritability and anxiety.

In addition, energy drinks do not sufficiently hydrate, and contain excessive amounts of sugar and especially caffeine. This is because the Food and Drug Administration (FDA) has guidelines for the caffeine content in soft drinks (17 milligrams in 12 ounces), but none for energy drinks. However, The American Beverage Association asserts that most 16-ounce energy drinks contain about half the caffeine found in a typical 16-ounce cup of coffeehouse coffee.

Experts also warn against consuming energy drinks mixed with alcohol. One such reason is because the caffeine content may fool an inebriated person into believing he/she is sober. The effects of alcohol are reduced when combined with an energy drink. Thus, a person may drink even more.

The bottom line? While it is generally safe to indulge in an extra boost of caffeine once in awhile, be mindful of

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certain side effects. When choosing an energy drink, opt for the sugar-free kind. Finally, if you choose to mix an energy drink with alcohol, make sure you have a d

Curb Cancer

Did you know that April is Cancer Control Month? Furthermore, were you aware that you can eat specific foods to significantly reduce your risk of cancer? It's true! Try incorporating the following into your diet:

- Dark, leafy green vegetables such as **romaine lettuce and chicory** contain carotenoids, a form of antioxidant that removes cancer-causing agents from the body. They also are rich in folate, which reduce the risk of lung and breast cancer.
- **Grapes** contain resveratrol, thought to stop cell damage before it starts.
- Decaffeinated **green tea** contains flavonoids that slow or prevent the development of colon, liver, breast and prostate cancer cells.
- **Soy** contains isoflavones that protect against bladder, cervix, stomach and lung cancer. Try soybeans as a healthy and filling snack.

Whole grains contain fiber, antioxidants and phytoestrogen compounds. Making whole grains part of your everyday diet can reduce the risk of every kind of cancer. Look at the ingredients in the bread and cereal you buy, and try to choose those that list whole grains as one of the first ingredients.