



Benefits Bulletin

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ARRA Modifies HIPAA Rules: General Effective Date For February 17, 2010

The American Recovery and Reinvestment Act (ARRA), contains modifications to HIPAA's Privacy and Security Rules, which apply to "Covered Entities" such as health plans, providers and clearing houses. ARRA will require all Business Associate Agreements to be modified. The changes covered in the ARRA will provide for increased civil, criminal and monetary penalties for non-compliance.

Under ARRA, the new requirement for Business Associates Agreements modifications to include: 1) the appointment of a security official, 2) workforce training on how to protect electronic protected health information ("E PHI"). Business Associates will also need to follow HIPAA's Security Rules relating to physical safeguards (such as locking computers that contain E PHI), technical safeguards (such as encrypting emails), and the requirement to adopt written policies and procedures.

Currently there is confusion regarding what technologies and methodologies Covered Entities and Business Associates should use to protect E PHI. For example, determining what email should be encrypted and what encryption software programs are sufficient. The U.S. Department of Health and Human Services will be required to issue and annually update guidance specifying the required technologies and methodologies mandated by the Act.

Source: *eflexgroup Compliance Department*, 20 Feb 2009.

Michelle's Law: Dependent Coverage During a Medical Leave From College

Michelle's Law, for plan years beginning on or after October 9, 2009, states that overage dependent students covered under their parent or legal guardian's insurance as a full-time student, may take a leave of absence from school if diagnosed with a serious medical illness or injury without losing insurance coverage. Prior to enactment of Michelle's Law, students in such situations were forced to either continue with a full-time course load or elect COBRA coverage.

Michelle's Law specifies that seriously ill or injured full-time college students may maintain dependent insurance coverage for up to 12 months, provided the student submits written documentation of medical necessity from a doctor. Students are eligible as long as they were covered by their parents' health insurance policy prior to diagnosis.

Source: *CONEXIS Comment Newsletter*, January 2009.

New I-9 Form Now Required

The new I-9 form to verify employment eligibility has three important changes, effective **April 3, 2009**:

- 1) All documents that are presented for verification must be current.
- 2) It eliminates expired employment authorization documents (Forms I-688, I-688A, and I-688B) from List A.
- 3) It adds two documents to List A:
 - Temporary I-551 printed notation on a machine-readable immigrant visa
 - A passport from Micronesia and 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, only accept documents listed on the new I-9.

Source: <http://www.uscis.gov/portal/site/uscis>.

FAQs for Employers About COBRA Premium Reduction Under ARRA

What is the new COBRA subsidy provision contained in the stimulus package signed by the President?

Individuals who are eligible for COBRA coverage due to an involuntary termination of employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA coverage, might be eligible to pay a reduced premium. Eligible individuals pay 35% of the total COBRA premiums for up to nine months. The employer will pay the remaining 65% of the premium by taking the subsidy amount as a credit on their quarterly employment tax return.

What plans are subject to the premium reduction provisions?

The COBRA premium reduction provisions apply to all group health plans subject to the COBRA rules under ERISA. The premium reduction is also available for group health insurance that is required by state law to provide comparable continuation coverage (such as Cal-COBRA).

Who is eligible to receive the COBRA premium reduction?

Premium reduction is available for "**Assistance Eligible Individuals**" (*AEI*) which is a COBRA qualified beneficiary eligible for COBRA continuation coverage at any time during the period from September 1, 2008 through December 31, 2009. *AEI*'s can elect COBRA when first offered or during the additional election period provided by ARRA. Once the *AEI* is eligible for other group health coverage, such as through a new employer's plan, spouse's plan, or Medicare he/she will no longer be eligible for the premium reduction.

Who is eligible for the second election opportunity for COBRA coverage?

Qualified beneficiaries whose qualifying event was an involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA but are no longer enrolled, have a new second election opportunity. *AEI*'s with extended COBRA election rights must receive a notice by April 18, 2009 and have 60 days after the notice is provided to elect COBRA. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period.

Does ARRA impose any new notice requirements?

Yes, plans and issuers must include ARRA rights as follows:

- A general notice to all qualified beneficiaries, whether they are currently enrolled in COBRA or not, who have a qualifying event during the period from September 1, 2008 through December 31, 2009.
- A notice of the extended COBRA election period to any *AEI* who had a qualifying event at any time from September 1, 2008 through February 16, 2009; and who either did not elect COBRA coverage or who elected but subsequently discontinued COBRA.

The Department of Labor has developed model notices that are available on their website at <http://www.dol.gov/COBRA>.

If the employee is required to pay only 35% of the premium, how is the employer reimbursed for the remaining 65% of the premium?

The employer may recover the subsidy provided to *AEI*'s by taking the subsidy amount as a credit on their IRS Form 941 quarterly employment tax return. For more information on the Form 941 credit and the tax provisions in ARRA, please visit the IRS website at <http://www.irs.gov/>.

If a COBRA payment of full premium is received for coverage for March or April from an individual determined to be an AEI, what does the plan do with the overpayment?

If an individual meets the requirements of an *AEI*, the overpayment may be applied as a credit toward subsequent premiums as long as it can be used within 180 days of the overpayment.

If the employer denies the employee's request for the premium reduction does the employee have appeal rights?

Yes. Individuals who are denied treatment as an *AEI* and thus denied eligibility for the premium reduction may request an expedited review of the denial. The Department of Labor will handle appeals related to private sector employer plans subject to ERISA's COBRA provisions. The Department must make a determination within 15 business days of receipt of a completed request for review.

Where can I go to find more information?

Guidance and other information is available on the Department of Labor's web site at www.dol.gov/COBRA.