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GOVERNOR

April 16, 2009

ALL-COUNTY LETTER NO. 09-21

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY FISCAL OFFICERS
ALL IHSS PROGRAM MANAGERS
PUBLIC AUTHORITY EXECUTIVE DIRECTORS

SUBJECT: IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDERS AND
PREMIUM ASSISTANCE FOR CONSOLIDATED OMNIBUS BUDGET
RECONCILIATION ACT (COBRA) BENEFITS AND EXTENSION OF
COBRA BENEFITS FOR OLDER OR LONG-TERM EMPLOYEES

<u>Reason For This Transmittal</u>	
<input type="checkbox"/>	State Law Change
<input type="checkbox"/>	Federal Law or Regulation Change
<input type="checkbox"/>	Court Order or Settlement Agreement
<input type="checkbox"/>	Clarification Requested by one or More Counties
<input checked="" type="checkbox"/>	Initiated by CDSS

This All-County Letter (ACL) provides guidance to counties implementing for IHSS Providers the COBRA premium subsidy provisions of the American Recovery and Reinvestment Act (ARRA) of 2009. An attachment to this letter also provides a process counties may wish to use to implement the COBRA changes for IHSS providers.

Since the California Department of Social Services (CDSS) is not the health benefit administrator or an entity to whom premiums are payable under COBRA, CDSS will not pay, and cannot claim reimbursement for the 65 percent COBRA subsidy under the federal law.

For purposes of COBRA the entity administering the health benefit, typically the county or an entity they delegate this to, such as the Public Authority (PA), will need to modify its current accounting procedures to include the COBRA claiming process as part of their quarterly 941 tax filing. The filing of Form 941 is not exclusively associated with IHSS providers, it can be claimed against any county or PA employee.

Background:

COBRA provides workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage.

The ARRA adds Premium Assistance for COBRA Benefits, Title III, Section 3001, which provides a subsidy of 65 percent of the COBRA continuation premium for eligible “workers” who are terminated, as stated above, between September 1, 2008 and December 31, 2009. Eligible “workers” are responsible for paying to the group health plan the other 35 percent of the premium cost. The federal law provides that the entity administering the COBRA continuation premium may claim reimbursement through a payroll tax credit.

Specifically, the ARRA also adds section 6432 to the Internal Revenue Code (IRC). (See IRC of 1986, Chapter 65, Subchapter B). Section 6432 provides that COBRA continuation coverage payments are payable to:

1. **A group health plan which is a multiemployer plan** (as defined in Section 3(37) of the Employee Retirement Income Security Act of 1974).
2. In the case of any group health plan not described in paragraph (1) –
 - (A) Which is subject to the COBRA continuation provisions...
 - (B) Under which some or all of the coverage is not provided by insurance, the **employer maintaining the plan**, and
3. In the case of any group health plan not described in paragraph (1) or (2), the **insurer providing the coverage** under the group health plan.

Reimbursement for the 65 percent COBRA continuation subsidy is made as follows:

1. COBRA subsidy payments will be treated for purposes of the ARRA and 31 U.S.C. Section 1324(b)(2), as having been paid to the Secretary of the Treasury payroll taxes in an amount equal to the COBRA premium subsidies paid under the ARRA. Any overstatement of the premium subsidy/reimbursement will be treated as an underpayment of payroll taxes and will be assessed and collected by the Secretary in the same manner as payroll taxes.

NOTE: As noted above, the tax credit could be claimed by any of the three entities: the county, the Public Authority if they file a Form 941 or the health care provider (i.e., Kaiser, Blue Cross, etc.). This tax credit may be claimed when filing quarterly taxes on the January 2009 revision of the IRS Form 941.

2. If the COBRA subsidy/payroll tax credit amount exceeds the taxes due, the Secretary of the Treasury will directly reimburse the entity claiming the tax credit.

County Implementation of the COBRA Subsidy

For the California IHSS Program health benefits are handled through the county and/or public authority. The entity responsible for implementing the COBRA benefit under the ARRA requirements as stated in Section 3001 is the entity that administers the health benefit.

Counties will need to ensure that if any other entity claims the credit or reimbursement of COBRA on Form 941, that all appropriate accounting and reporting policies are followed ensuring no duplicate payments occur. For county reference, a copy of Title III of the Act is attached to this ACL. A COBRA process/procedure model for implementation of the COBRA changes is also attached. This model was modified from a draft procedure developed by one county and is included to assist counties in developing their own COBRA processes. The attached process and procedures is offered as an example and is not a requirement.

Counties should be aware that the ARRA requires notification regarding the COBRA provisions of the ARRA subsidy, an application for benefits, and a packet of general information regarding COBRA benefits be sent to eligible individuals (IHSS providers) no later than April 30, 2009. Counties may obtain copies of model notices from the United States Department of Labor (DOL) website at <http://www.dol.gov/ebsa/COBRAmodeNotice.html>. Additional DOL information and materials regarding the COBRA subsidy are available at <http://www.dol.gov/ebsa/cobra.html>.

For any questions or concerns regarding the new COBRA requirements, contact Rolonda Moen, Manager, Fiscal and Administrative Unit, at (916) 229-4598.

Sincerely,

Original Document Signed By:

EVA L. LOPEZ
Deputy Director
Adult Programs Division

Attachments

Procedure for Implementation of American Recovery and Reinvestment Act (ARRA) COBRA Subsidy

The ARRA subsidy represents a modification to the COBRA process. The subsidy necessitates changes in three areas: Notification, Enrollment / Billing, and Reimbursement. All individuals who may qualify for the subsidy must be notified. Respondents must meet eligibility requirements, request the subsidy and pay their share of the cost. Finally, a reimbursement process must be developed to recoup these subsidy costs.

The COBRA subsidy applies to all eligible workers involuntarily terminated or had their hours of employment reduced after September 1, 2008. The provision identifies the following three eligible worker situations:

- Those that are already receiving COBRA continuation coverage.
- Those that have declined COBRA coverage previously.
- Those who will be terminated or have their hours of employment reduced in the future.

The implementation details may differ for each phase depending on the target group. These differences are discussed in the procedures described below.

Notification

All workers terminated in the qualifying time period between September 1, 2008 and December 31, 2009 should be notified of their potential eligibility for the subsidy. Because the circumstances for the three target groups are different, each group will require their own version of the notification letter. The US Department of Labor has issued model letters for each of the groups. Included with these model notices is an application in which the individual certifies meeting the requirements for the COBRA subsidy. Samples of the model letters and applications are included with this ACL. Counties will need to identify potential eligible providers for the three groups.

These are suggested procedures for identifying and notifying each of the target groups:

1. From now until December 31, 2009, notification regarding the COBRA subsidy and an application to participate with the subsidized rates, if qualified. Provide the general packet of COBRA informational materials and application.
2. Identify all individuals terminated between September 1, 2008 and now and who did not elect COBRA at the time of termination. Send these individuals a packet informing them of the COBRA subsidy, a letter explaining their right to elect COBRA under the subsidized rates in a special election period, if qualified, and an application for the program. This special election period ends 60 days following the date of notification. This packet must be sent no later than April 30, 2009.
3. Identify individuals terminated between September 1, 2008 and now, who are currently enrolled in COBRA. These individuals may require a credit and/or refund. Whichever organization, the county or the Public Authority, is responsible for the actual notification component then sends a general notice informing COBRA-enrolled individuals of the newly offered COBRA subsidy, and an application to participate, if qualified. This notice must also be sent out no later than April 30, 2009.

Enrollment / Billing

Suggested procedures for handling enrollment and billing for the subsidy.

1. The mechanism for determining enrollment for the COBRA subsidy is self-certification, as suggested by the US Department of Labor via the "Request for Treatment as an Assistance Eligible Individual" form. This form will be mailed out to potentially eligible individuals. Verify that the checkboxes have been marked "Yes" for the four qualifying statements:

- a. Their loss of employment must have been involuntary.
- b. Their loss of employment occurred on or after September 1, 2008 and on or before December 31, 2009.
- c. They are not eligible for other group health coverage.
- d. They are not eligible for Medicare.

Verify also that a signature has been provided. Individuals receive COBRA coverage at the subsidized rate. Certification of eligibility must be kept for IRS documentation.

2. Identify the maximum length of time the subsidy is available for the qualified individuals. The subsidy is offered until the earliest of:

- a. Nine months.
- b. End of COBRA Continuation Period.
- c. Individual becomes eligible for Medicare or another group health plan.

3. For these qualified individuals within the allowable subsidy timeframe, bill COBRA coverage at 35 percent of the premium costs instead of the full price of 102%. These billing records must be kept for IRS documentation.

4. When the 35 percent payment is received within the allowable grace period (45 days initial, 30 days thereafter), the COBRA premium is considered paid-in-full. Proof of timely payment must be kept as IRS documentation.

5. The subsidy is retroactive to March 1, 2009. If an individual qualifies for the COBRA subsidy, but has already paid the full premium cost for this month, they are entitled to a credit for the amount of overpayment towards future premium costs within 180 days. Otherwise, the overpayment must be refunded within 60 days of receipt.

Reimbursement

The Federal Government provides reimbursement for the subsidy costs through the Employee Payroll Tax process, filed quarterly on IRS Form 941.