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May 22, 2009

**ERRATA**

ALL-COUNTY LETTER NO. 09-21E

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

SUBJECT: CORRECTION TO ALL-COUNTY LETTER (ACL) 09-21

REFERENCE: ACL 09-21, dated April 16, 2009: 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

Reason For This Transmittal

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by one or More Counties
- Initiated by CDSS

This All-County Letter (ACL) provides guidance to counties implementing for In-Home Supportive Services (IHSS) Providers the Consolidated Omnibus Budget Reconciliation Act (COBRA) premium subsidy provisions of the American Recovery and Reinvestment Act (ARRA) of 2009. The ARRA provides that the entity to whom COBRA continuation coverage payments are payable may recover the federal 65 percent share through the filing of quarterly Form 941. The filing of Form 941 is not exclusively associated with IHSS providers -- it can be claimed against any employee taxes due or paid.

Since the California Department of Social Services (CDSS) is not the health benefit administrator nor 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.

Background:

The Employee Retirement Income Security Act (ERISA) of 1974 is a federal law that sets minimum standards for retirement and health benefit plans.

The COBRA of 1985 amended ERISA to provide for the continuation of health care coverage for employees and their beneficiaries (for a limited period of time) if certain events would otherwise result in a reduction in benefits. 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 described 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 to whom COBRA continuation premiums are payable may claim reimbursement from the federal government for payment of the 65 percent subsidy 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 multi-employer 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.

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.

As noted above, the tax credit could be claimed by any of the three entities depending on which entity receives COBRA premium payments: (1) the multi-employer group health care plan, or (2) if there is no multi-employer group health care plan, the employer who maintains the plan, or (3) if there is no multi-employer group health care plan or employer maintained plan, the insurer providing coverage. This tax credit may be claimed when filing quarterly taxes on the January 2009 revision of the IRS Form 941. Again, as noted above, the filing of Form 941 is not exclusively associated with IHSS providers -- it can be claimed against any employee taxes due or paid. For example, if a multi-employer group health care plan (for example, plans offered by Kaiser, Blue Shield, Health Net) was the entity to whom the provider paid COBRA premiums, and that plan covered the 65 percent federal share, the plan could thereafter file Form 941 and claim an offset equal to the amount of the federal share it paid when calculating its payroll taxes for the plan's employees.

#### Implementation of the COBRA Subsidy

For the California IHSS Program, health benefits are administered within each county differently depending on the structure of the relationship between the county, the Public Authority where one exists, the providers' representative where one exists, and the provider. The entity responsible for implementing the COBRA benefit under the ARRA requirements as stated in section 3001 is the entity that administers the COBRA health benefit. As part of the administration of the IHSS program, counties may want to confirm with the entity administering the IHSS providers' health plan that it is familiar with the new ARRA requirements and the procedure for claiming reimbursement.

The entity administering the COBRA benefits will need to comply with all federal ARRA and COBRA requirements. The entity who administers COBRA benefits 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). Copies of model notices from the United States Department of Labor (DOL) are available 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>.

Because ERISA and COBRA are federal law, IHSS providers with questions about COBRA continuation coverage should contact their health plan's administrator or, if they believe they have improperly been denied eligibility for premium reduction, the U.S. DOL which will hear such appeals.

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A COBRA process/procedure model for implementation of the COBRA changes is attached. This model was modified from a draft procedure developed by one county and is included to assist in developing a COBRA process. The process offered as an example was included in ACL 09-21 dated April 16, 2009 and is not intended as a requirement.

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