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PA 09-10
PA EX 09-06

TO: Participating Agency Chief Executive Officers (CEOs) and
Health Benefit Administrators (HBAs)

FROM: The Employee Benefits Division

SUBJECT: The American Recovery and Reinvestment Act of 2009
COBRA Subsidy Provisions

DATE: April 2, 2009

The American Recovery and Reinvestment Act of 2009 (ARRA) includes significant changes to the COBRA continuation of coverage rules. In general, ARRA provides COBRA premium assistance funded by the federal government equal to 65% of the COBRA premium for COBRA qualified beneficiaries eligible as the result of the employee's involuntary termination of employment occurring during the period September 1, 2008 through December 31, 2009. Additionally, the State Insurance Law was amended on March 20, 2009 (A. 6740/S. 3068) to provide consistency with the ARRA COBRA requirements and the State's continuation coverage law requirements applicable to employers with fewer than 20 employees. Therefore, the ARRA subsidy requirements apply to Participating Agencies subject to COBRA (those with 20 or more employees) and to Participating Agencies that instead provide continuation coverage pursuant to the State Insurance Law.

Because the federal ARRA requires that only an insurer can claim the COBRA subsidy on behalf of employers with fewer than 20 employees, NYSHIP will be working with small Participating Agencies to implement the ARRA requirements (see below).

If you are uncertain whether your agency is subject to COBRA or the State Insurance Law's continuation coverage requirements, you need to determine the number of your employees for COBRA purposes, as described in this paragraph. COBRA rules state the following: "Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time."

Please keep in mind that COBRA applicability is based on the number of EMPLOYEES your agency has, NOT the number of NYSHIP enrollees.

Participating Agencies Subject to COBRA Requirements

As you are aware, Participating Agencies in the New York State Health Insurance Program (NYSHIP) subject to COBRA requirements are responsible for administering COBRA for their employees. Therefore, if you have not already done so, you should become familiar with the new requirements and ensure that you or your COBRA administrator comply with the new requirements. ARRA imposes specific notice requirements that must be satisfied by April 18, 2009. You will find details about these requirements, including COBRA model notices, on the U. S. Department of Labor website at <http://www.dol.gov/ebsa/cobra.html>. The website also contains a link to the Internal Revenue Service's website, which provides information regarding how to claim the subsidy credit.

Participating Agencies Subject to New York State Insurance Law Continuation Coverage Requirements (PAs with less than 20 employees)

While NYSHIP has information regarding your agency's number of NYSHIP enrollees, we must identify immediately those agencies subject to the State Insurance Law continuation coverage requirements by having each agency verify the number of its **employees** in 2008. Please complete the attached form and fax it to **518-473-3292**. Please return it to us immediately so that we can make the necessary arrangements with the Empire Plan insurers to administer the subsidy on your behalf.

To assist you in meeting your obligations under the State Insurance Law's continuation coverage requirements, the Employee Benefits Division will post on the Department's web page an adaptation of the model notice that the federal government has suggested for use by small employers not subject to COBRA requirements. The model notice will be available on the Department's home page at www.cs.state.ny.us under *News and Notifications*. The model notice will address the three circumstances anticipated by the federal COBRA subsidy requirements as implemented in conjunction with the State Insurance Law continuation coverage requirements applicable to employers with fewer than 20 employees:

1. It will provide one time notice to all enrollees terminated between September 1, 2008 and February 17, 2009, who did not elect continuation coverage or whose continuation coverage was cancelled, such as for non-payment of premium. If these individuals meet the involuntary termination requirement, they are eligible to enroll for coverage and also to apply for the subsidy and pay only 35% of the premium for a period of nine months
2. It will provide one time notice to all enrollees terminated between September 1, 2008 and February 17, 2009, who elected continuation coverage that remains in effect, advising them that they may apply for the subsidy and pay only 35% of the premium for a period of nine months.
3. It also may be used as a general notice for all covered employees terminated after February 17, 2009.

Please note that this notice must be mailed by April 18, 2009, to all former employees who were terminated between September 1, 2008 and February 17, 2009.

Since we do not have specific information regarding the termination of your agency's employees or other aspects of your agency's health plan offerings to your employees, you will need to adapt the model notice in a manner appropriate for your needs.

After providing potential enrollees with the appropriate notice, your agency must notify EBD of each former employee's election to continue coverage, and also must provide a completed form (to be provided by EBD) that verifies that the employee was involuntarily terminated by your agency.

Your agency's NYBEAS billing will be adjusted to exclude the employer portion of the COBRA premiums designated as eligible for premium assistance payments. Your agency is responsible to collect from the enrollee the enrollee's 35% share of the premium for the continuation coverage.

The Empire Plan insurers will be responsible for covering the remaining 65% of the premium and will recover that amount as a credit to their federal withholding taxes. The ARRA requires that insurers maintain supporting documents for all credits claimed. The Employee Benefits Division will work with you to ensure that all necessary documents are provided.

The U.S. Department of Labor is expected to issue final rules related to the new COBRA requirements this week. Once that additional information becomes available we will finalize our procedures for addressing the requirements. We will keep you apprised of any new developments.

Attachment