



JONES DAY  
**COMMENTARY**

## EXTENSION OF COBRA SUBSIDY FOR ASSISTANCE ELIGIBLE INDIVIDUALS

As part of the Department of Defense Appropriations Act of 2010, which was signed into law on December 19, 2009 (“DODA Act”), Congress extended the COBRA subsidy that was originally enacted by the American Recovery and Reinvestment Act of 2009 (“ARRA”). (See *Jones Day Commentary* entitled “Group Health Plan Continuation Coverage: Fast Action Required To Comply with New COBRA Premium Assistance Requirements,” February 2009, for more information about the COBRA subsidy as originally enacted by ARRA at [http://www.jonesday.com/pubs/pubs\\_detail.aspx?pubID=S5943](http://www.jonesday.com/pubs/pubs_detail.aspx?pubID=S5943).) The extension imposes additional notification requirements on insurers and employers sponsoring self-insured group health plans. **The deadline for providing additional COBRA notices for some individuals is as early as January 29, 2009, and other prompt actions may be required.** The following summary describes what action insurers and employers should be taking.

### COBRA SUBSIDY GENERALLY

The ARRA provided for a 65 percent COBRA premium subsidy for certain COBRA-eligible individuals for up to nine months of COBRA coverage. The original ARRA subsidy was available to individuals who lost health coverage due to an involuntary termination of employment that occurred between September 1, 2008, and December 31, 2009 (“Assistance Eligible Individual” or “AEI”). The original subsidy was available for periods of COBRA coverage that began on or after February 17, 2009.

### DODA ACT EXTENSION

The DODA Act extends the COBRA subsidy to individuals whose involuntary termination of employment occurs on or before February 28, 2010. In addition, the DODA extends the potential length of the COBRA subsidy period from the original nine months to a

total of 15 months. The DODA Act also clarifies that to be an AEI, an individual does not have to lose medical plan coverage prior to February 28, 2010. An involuntarily terminated individual will qualify as an AEI if coverage is lost due to an involuntary termination of employment that occurs on or prior to February 28, 2010, even if coverage actually is lost at a later date.

## **TRANSITION PERIOD**

The DODA Act creates a “transition period” for compliance with the changes. The transition period for any AEI is any period of coverage that began before December 19, 2009, and that is affected by the passage of the DODA Act. In other words, if the AEI can benefit from the DODA Act changes, the AEI has a transition period in which to act to secure the benefits. Insurers and employers must also take actions during the transition period.

## **RETROACTIVE COVERAGE REINSTATEMENT**

Any AEI who lost his or her COBRA coverage due to a failure to pay the full COBRA premium following a pre-December 19, 2009, expiration of the nine-month COBRA subsidy period, and who otherwise would be eligible for the subsidy extension, can retroactively reinstate his or her COBRA coverage by paying the 35 percent COBRA premium retroactively. Payment must be made by the later of February 17, 2010, or 30 days after the individual is notified of the subsidy extension.

## **PREMIUM REFUNDS**

An AEI who paid the full COBRA premium because his or her nine-month COBRA subsidy expired before December 19, 2009, and who would be eligible for the subsidy extension pursuant to the DODA Act, will be entitled to a refund of the excess premium payments. The coverage provider may apply the excess premium payments to future COBRA premiums due from the AEI if (and for as long as)

it is reasonable to believe that such amounts can be used within the next 180 days. The excess amounts that cannot be so used must be refunded to the AEI within 60 days after the excess premium payment or after the day (within such 180-day period) on which it is determined that the excess amounts cannot be applied toward future premiums.

## **NOTICE OF SUBSIDY EXTENSION**

By February 17, 2010, insurance companies and employers sponsoring self-insured group health plans must provide notice of the COBRA subsidy extension to any individual who is an AEI at any time on or after October 31, 2009. Any AEI whose qualifying event occurs after December 19, 2009, must be notified of the subsidy extension in accordance with the general COBRA notification requirements. Any AEI who is within his or her “transition period” (as described above) must be notified of the COBRA subsidy extension within 60 days after the beginning of the “transition period.” For most individuals whose coverage is provided on a monthly basis and whose nine-month subsidy period ended on November 30, 2009, the notice must be provided by January 29, 2010.

## **TO DO LIST**

Insurance companies and employers sponsoring self-insured plans, together with their third-party administrators, will need to take several steps to implement the DODA Act extension of the COBRA subsidy:

- Modify COBRA notices to reflect the COBRA subsidy extension.
- Identify all AEIs to whom notice of the DODA Act extension must be provided. In particular, identify individuals who are in the “transition period” because such individuals must receive notices within 60 days after their nine-month COBRA subsidy ended. Provide extension notices by the required deadline.

- Identify individuals who either dropped COBRA coverage or paid the full COBRA premium after their nine-month subsidy period expired and who would be entitled to the DODA Act COBRA subsidy extension.
- With respect to the individuals who are in the “transition period,” establish procedures for reinstating COBRA coverage retroactively and for processing retroactive payments of the COBRA premiums.
- Establish procedures for calculating and refunding excess premium payments with respect to individual who during their “transition period” paid the full COBRA premium amount. Determine whether such extra premium payments may be applied within 180 days of their payment to the individual’s future COBRA premium payments. If at any time during such 180-day period it is no longer reasonable to believe that excess premium payments may be applied to the individual’s future contribution obligation, the excess must be refunded within 60 days.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com](http://www.jonesday.com).

**Marlene P. Frank**

+1.614.281.3843

[mpfrank@jonesday.com](mailto:mpfrank@jonesday.com)

**Sarah Heck Griffin**

+1.213.243.2560

[sgriffin@jonesday.com](mailto:sgriffin@jonesday.com)

**Evan Miller**

+1.202879.3840

[emiller@jonesday.com](mailto:emiller@jonesday.com)

**Kirstin Poirier-Whitley**

+1.213.243.2380

[kpoirierwhitley@jonesday.com](mailto:kpoirierwhitley@jonesday.com)

**Yelena Fertman**

+1.312.269.4311

[yfertman@jonesday.com](mailto:yfertman@jonesday.com)

**Kathleen Hohler**

+1.216.586.7169

[khohler@jonesday.com](mailto:khohler@jonesday.com)

**Elena Kaplan**

+1.404.581.8653

[ekaplan@jonesday.com](mailto:ekaplan@jonesday.com)

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