



March 2010

## Employee Benefits Legislation Update: March 2010

By Jennifer Lunski, Esq., *Vice President, Compliance Officer*

At Woodruff-Sawyer, we offer a monthly update on legislative changes that impact employee benefit plans. Employers should review the update to ensure their plans and policies are revised and in compliance with the newest legislation and regulations. This monthly update includes articles on the following topics:

1. ARRA COBRA Subsidy Extended to March 31, 2010
2. Federal Mental Health Parity Guidance Issued
3. DOL Releases Model Employer CHIP Notice to Notify Employees Regarding Eligibility for Premium Assistance

### ARRA COBRA SUBSIDY EXTENDED TO MARCH 31, 2010

On Tuesday evening, March 2, 2010, President Obama signed into law legislation that provides a 31-day extension of federal subsidies of COBRA health care premiums. The legislation, The Temporary Extension Act of 2010 (H.R. 4691), makes the following changes to the American Recovery and Reinvestment Act (ARRA).

1. The law extends the 65%, 15-month premium subsidy for laid-off workers to those involuntarily terminated from March 1 through March 31. If the extension had not been passed, employees laid-off after February 28 would have been ineligible for the subsidy. The law is retroactive, so individuals who were involuntarily terminated on March 1st and 2nd are eligible for the subsidy.
2. The measure adds a new qualifying event to individuals who experience a reduction in hours followed by an involuntary termination. The reduction in hours must occur on or after September 1, 2008 and on or before March 31, 2010. The involuntary termination of employment must occur on or after

March 2, 2010 and on or before March 31, 2010. The COBRA maximum coverage period is measured from the reduction in hours Qualifying Event date. The subsidy is measured from the involuntary termination date.

3. The law clarifies that employer determinations to provide the subsidy are valid as long as the determination is based on a reasonable interpretation. Employers who maintain supporting documentation will be able to fall within the safe harbor to prove that.

The Senate will continue consideration of legislation, H.R. 4213, that would extend the premium subsidy to employees laid-off through Dec. 31, 2010. Your Woodruff-Sawyer representatives will continue to apprise you of current developments as they occur.

**Employer Action Items:** Woodruff-Sawyer representatives are monitoring COBRA vendors to ensure that the COBRA notices are revised to reflect the new March 31, 2010 subsidy eligibility expiration date. If you administer COBRA internally, be sure to revise the notices accordingly. Additionally, all clients should offer COBRA and the subsidy to those employees who experience a reduction in hours followed by an involuntary termination if it occurs between March 2, 2010 and March 31, 2010.

### FEDERAL MENTAL HEALTH PARITY GUIDANCE ISSUED

As we discussed in our [November 2009 Legislative Update](#), Congress enacted a sweeping mental health parity law that significantly expanded mental health parity requirements for group health plans. The Paul Wellstone and Pete Dominici Mental Health Parity and Addiction Equity Act of 2008 (the "Act") applies to employers with 50 or more workers whose group health plans choose to offer mental health or substance



use disorder benefits and is effective for plan years beginning on or after October 3, 2009.

Now, the Internal Revenue Service ("IRS"), the Department of Labor ("DOL") and Centers for Medicare & Medicaid Services ("CMS") have jointly issued interim final rules implementing the provisions of the Act. Although the Act is effective for plan years beginning on or after October 3, 2009, the interim final rules (the "Rules") are applicable to plans and insurers for plan years beginning on or after July 1, 2010.

Highlights from the Rules include:

- Under the Act, benefits provided for mental health and substance use disorder treatment may be no more restrictive than benefits provided for "medical/surgical benefits." The Rules clarify that "medical/surgical benefits" should be defined under the terms of the plan in accordance with applicable state and federal law and must be generally accepted in the medical community.
- Under the Act, the financial requirements applicable to mental health or substance use disorder benefits must be no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan. The Rules define the term "predominant" as the level of coverage that applies to more than one-half of "medical/surgical benefits" subject to the financial requirement or quantitative treatment limitation in that classification. In simpler terms, mental health and substance use services should be covered "the same as any other illness." Situational examples are provided in the amended sections of the IRS Code, DOL regulations and CMS regulations, beginning on page 81 of the Rules.

To view the DOL's fact sheet on the Rules, please visit: <http://www.dol.gov/ebsa/newsroom/fsmhpaea.html>

To view a copy of the Rules, please visit: <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=23511&AgencyId=8&DocumentType=2>

**Employer Action Items:** Work with your Woodruff-Sawyer representative to ensure that your mental health (and substance abuse) benefits are in parity with your surgical and medical benefits.

## DOL RELEASES MODEL EMPLOYER CHIP NOTICE TO NOTIFY EMPLOYEES REGARDING ELIGIBILITY FOR PREMIUM ASSISTANCE

The DOL website now has available model Employer Notices that can be used to satisfy the employer notice requirement under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). As discussed in our [February 2009 Legislative Update](#), CHIPRA added new notice and disclosure obligations for employers that maintain group health plans in states that provide Medicaid or state Children's Health Insurance Program (CHIP) assistance in the form of premium assistance subsidies. This law also created additional HIPAA special enrollment rights that permit eligible employees and their dependents to enroll in an employer's group health plan in two situations: (1) when Medicaid or CHIP coverage is terminated due to loss of eligibility; and (2) upon eligibility for a premium assistance subsidy under Medicaid or CHIP.

The Employer Notice requirements include the following: (1) the Notice must be provided annually; (2) the Notice must be provided on an automatic basis and free of charge; and (3) the Notice must inform each employee (regardless of enrollment status) of potential opportunities for premium assistance in the state in which the employee resides.

Employers may send the CHIP Notice in a separate mailing, but are not required to do so. The notice may be provided concurrent with enrollment packets, open enrollment materials, or in the plan's Summary Plan Description (SPD) as long as the employee receives the notice by the applicable due date. However, the regulations require that the notice be a separate document to ensure that employees who may be eligible for premium assistance can be reasonably expected to appreciate its significance. The notice may be distributed electronically according to the Department of Labor's electronic disclosure requirements. The notice will be required on an annual basis going forward.

For plan years beginning on or after February 4, 2010 through April 30, 2010, the notice must be distributed to eligible participants by May 1, 2010. For plan years beginning on or after May 1, 2010, the notice must be distributed by the first day of the next plan year. This means that calendar year plans will have to distribute the notice by Jan. 1, 2011.

The model Notices provide a brief description of premium assistance and rely on state contact information for state-



specific program descriptions. The DOL has stated that it intends to update its website annually to reflect any changes to the list of states offering such programs.

You can access the DOL's Model CHIP Notice by visiting: <http://www.dol.gov/ebsa/chipmodelnotice.doc>

You can view the DOL's guidance on the notice requirements at: <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=23521&AgencyId=8&DocumentType=3>

For the DOL's guidelines on electronic disclosure, please visit: [http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_2520/29CFR2520.104b-1.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_2520/29CFR2520.104b-1.htm)

**Employer Action Items:** Woodruff-Sawyer & Co. client open enrollment compliance notices have been revised to include the model notice. If you do not use the open enrollment compliance notices provided by Woodruff-Sawyer & Co., you will want to review the applicable requirements carefully to ensure compliance. Remember that for plan years beginning on or after February 4, 2010 through April 30, 2010, the notice must be distributed to eligible participants by May 1, 2010.

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*Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.*

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