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Legislation Requires Action for Group Health Plans

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The benefits world is quickly being reshaped by recent legislation, some of which requires immediate action. The following highlights these important developments:

COBRA Subsidy in The American Recovery and Reinvestment Act of 2009: **This law requires immediate attention by plan sponsors.**

Availability of Subsidy: This law provides a temporary federal subsidy for COBRA premiums for individuals who lose group health coverage as a result of an involuntary loss of employment between September 1, 2008, and December 31, 2009, for any reason other than "gross misconduct." The subsidy is also available for continuation coverage under a state program for plans not subject to COBRA. The subsidy is available to an eligible individual for a maximum of nine months and may be terminated earlier if the individual is eligible for other group health coverage. The subsidy is phased out for high income individuals (over $125,000 if single and over $250,000 if married).

Payment of Subsidy: Effective March 1, 2009, group health plans cannot charge individuals eligible for the subsidy more than 35% of the otherwise applicable COBRA premium. The employer recovers the remaining 65% of the premium by submitting certain information and claiming a credit against its federal payroll taxes. (If a plan is fully insured and not subject to COBRA, the insurer is entitled to the credit. In the case of a multiemployer plan, the plan is entitled to the credit).

Notice to Current COBRA Beneficiaries: Current COBRA beneficiaries must be notified and the premium reduction must be implemented by April 18,

2009 (60 days after enactment). The plan must credit or refund any excess premium paid for March and April 2009.

Second Chance Enrollment: By April 18, 2009, plan sponsors must also notify all individuals who experienced a COBRA qualifying event on or after September 1, 2008, but did not elect COBRA, that they now have another opportunity to enroll and receive the subsidy if the qualifying event was an involuntary loss of employment. The Department of Labor (DOL) has been directed to issue model notices for this purpose by March 19, 2009. Eligible individuals will have 60 days from the date of notice to enroll. Coverage will be effective March 1, 2009, and will not extend beyond the date COBRA coverage would have expired had the individual elected COBRA when first eligible (generally 18 months from the qualifying event).

Option to Change Plans: The plan sponsor may, but is not required to, allow eligible individuals to elect COBRA coverage under a plan offered to active employees that is different from the plan in which the individual was previously enrolled, provided that the COBRA premium for the alternative coverage does not exceed the premium for the coverage in which the individual was previously enrolled.

COBRA Notices Through December 2009: COBRA notices issued to individuals who experience qualifying events between now and December 31, 2009, must include information about the subsidy and, if applicable, information about the option to enroll in an alternative plan.

Impact on Severance Arrangements: The subsidy may offer planning opportunities for employers who are downsizing and ordinarily would charge discounted COBRA premiums for some period. The details of the payroll tax credit provide an incentive for employers not to discount COBRA premiums. That is because the amount of the 65% government subsidy, and the payroll tax credit for the subsidy, are based on the amount of premium charged to the COBRA beneficiary. By maximizing the COBRA premium, the employer maximizes the government reimbursement.

- ***Example***: Assume the full monthly COBRA premium is $1,000 and that the employer's standard severance package offers terminated employees COBRA coverage for the first six months at the active employee rate of $200. Under the subsidy rules, for the first six months, the severed employee would be charged $70 per month and the employer could claim the tax credit for $130 per month. If instead, the employer charged $571 per month, the employee would still be required to pay $200 (35% of $571) and the employer would subsidize and

receive $371 in payroll tax credit, maximizing the government share of the COBRA premium.

Administrative Challenges: This summary only highlights the key features of the subsidy. Obviously it creates a number of administrative challenges for plan sponsors, particularly since it is effective immediately and the law is unclear in some respects. New administrative procedures will be required for issuing notices as required, claiming the credit and tracking the duration of the subsidy so that individuals resume paying the full COBRA premium after nine months. A timeline for the applicable requirements and notices can be seen in the Provisions Timeline under Related Files.

Children's Health Insurance Program Reauthorization Act of 2009 (CHIP): This law extends and expands federal support for state Medicaid plans for low-income families. It also imposes new requirements on group health plans. Effective April 1, 2009, group health plans must permit employees and dependent children, who are eligible but not enrolled, to enroll within 60 days after losing coverage under Medicaid or a state child health assistance program, or after becoming eligible for premium payment assistance under such a program. CHIP will also require group health plans to provide written notices to employees regarding Medicaid and state health assistance programs and to cooperate with government requests for certain plan information. The notice provisions are not effective until plan years beginning after the date DOL and Health and Human Services (HHS) issue model notices for this purpose, which may be as late as February 2010.

Medicare Mandatory Reporting: Unless your group health plan already shares data with Medicare using a Voluntary Data Sharing Agreement, a new electronic filing with Medicare is required in April 2009. The filing is intended to facilitate coordination of benefits with Medicare and requires reporting names and other identifying information for all enrolled active employees and spouses, age 55 and over, and certain other individuals eligible for Medicare. Generally, the responsibility for the filing falls on health insurance companies and third-party administrators (TPA); however, plan administrators of self-insured plans that do not use a TPA must self-report. It is important that you contact your TPA to confirm that the TPA will make the filing. More information regarding the requirements for this filing can be found on the Centers for Medicare and Medicaid Services (CMS) website at www.cms.hhs.gov/MandatoryInsRep.

Michelle's Law: This law allows seriously ill college students who would otherwise lose dependent coverage under a group health plan due to loss of student status to continue regular dependent coverage - not COBRA - for up to one year while on a medically necessary leave of absence. Any notice a plan provides requiring certification of student status must include a description of this rule. The law is effective for medically necessary leaves of absence that commence in plan years beginning after October 8, 2009 (January 1, 2010, for calendar year plans).

Mental Health Parity Act Amendments: The Emergency Economic Stabilization Act of 2008 amended and significantly expanded the requirements of the 1996 Mental Health Parity Act. The 1996 Act precluded health plans from applying lower annual or lifetime dollar limits on mental health treatment than provided for other medical treatment. It did not apply to alcohol and substance abuse treatment and did not prevent other distinctions in coverage such as higher coinsurance or limits on the number of visits or days for mental health treatment. The 2008 amendments extend the parity rules to substance abuse disorders and preclude plans from applying more restrictive financial requirements (such as deductibles, coinsurance, out-of-pocket expenses) or lower visit or day limits than the "predominant" financial requirements and treatment limits applicable to other medical and surgical benefits. The law does not require plans to cover any mental health treatment, but if such coverage is provided, the parity requirements must be met. The new rules apply for plan years beginning after October 3, 2009 (January 1, 2010, for calendar year plans). After the first year, plans may apply to DOL for an exemption from the parity requirements if, as a result of providing this coverage, the cost of coverage rises more than 2 percent in the first year and 1 percent annually thereafter. The rules do not apply to plans of small employers (less than 51 employees).

If you have any questions regarding this or any other Employee Benefits matter, please contact your Husch Blackwell Sanders attorney.

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