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and Blue Plus  
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April, 2009

Dear Group Leader,

Please read our April Group Leader Bulletin for important information concerning COBRA Subsidy Notices. The Bulletin and this letter describe the actions you should take to implement the subsidy.

There are two sections below:

- **Part A – Federal COBRA** for employers with 20 or more full- and part-time employees
- **Part B – Minnesota Continuation** for employers with fewer than 20 full- or part-time employees

Please determine which category your company falls into and follow the steps outlined in that section. Blue Cross and Blue Shield of Minnesota cannot tell you if you are subject to Federal COBRA or Minnesota continuation. If you have further questions about this you may contact your legal advisor or the U.S. Department of Labor's Kansas City Regional Office at **1-816-285-1800**.

The revised **Blue Cross COBRA & Continuation forms** referenced below are available at [bluecrossmn.com](http://bluecrossmn.com) under "for employers" or by searching on "COBRA for employers."

#### **PART A – Federal COBRA**

**Employers subject to COBRA who employed 20 or more full- or part-time employees, regardless of hours worked, on typical business days throughout 2008**

Employers in this category are responsible to collect only 35 percent of the COBRA premium from the former employee (and dependents) and claim a 65 percent payroll tax credit.

#### **1. Extended Election – Action required by April 18, 2009**

Employees who were involuntarily terminated (except for gross misconduct) on or after September 1, 2008, (\*see note 1) along with their dependents (\*see note 2), *and* who either did not elect COBRA or elected COBRA but subsequently terminated their COBRA coverage:

- Send the Blue Cross COBRA Special Extended Election Notice Form X17369 *or* modify the Department of Labor's (DOL's) new COBRA model notice (found at [www.dol.gov/ebsa/COBRA.html](http://www.dol.gov/ebsa/COBRA.html)) in connection with Extended Election Periods to meet your group's needs – **by April 18, 2009**.
- These former employees have 60 days to elect COBRA. Coverage must be retroactive to March 1, 2009.

[bluecrossmn.com](http://bluecrossmn.com)

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### **3. Extended Election**

Employees who were involuntarily terminated (except for gross misconduct) on or after September 1, 2008, (\*see note 1) along with their dependents (\*see note 2) *and* who either did not elect COBRA or elected COBRA but subsequently terminated their COBRA coverage:

**If the Minnesota legislature enacts enabling legislation as planned, these former employees will be eligible to apply for COBRA and the federal subsidy.**

**If this law is enacted:**

1. Send the Blue Cross COBRA Special Extended Election Notice Form X17369. This form includes the extended election, coverage change and subsidy election notice and forms for the former employee and/or the former employee's previously covered dependents to complete and return to you.

These former employees have 60 days to elect COBRA retroactive to March 1, 2009.

2. Complete your Attestation in the gray shaded box concerning your number of employees and confirming the former employee was involuntarily terminated along with the date of termination and send the completed continuation election, coverage change and subsidy application forms to Blue Cross.

If you have any questions about the information in this letter, please contact the group leader line at (651) 662-1725 or toll free at 1-877-293-7035.

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**\*Note 1.** Individuals who lose coverage due to an employee's involuntary termination on or before December 31, 2009, must also lose plan coverage on or before December 31, 2009, to be eligible for the subsidy. If the loss of coverage occurs on or after January 1, 2010, the former employee and dependents are not subsidy eligible. *See* IRS Notice 2009-27, Q&A-13. However, if the employee is involuntarily terminated *and* loses coverage on or before December 31, 2009, the individual may elect COBRA on or after January 1, 2010 and be eligible for the subsidy. *See* IRS Notice 2009-27, Q&A-18, <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

**\*Note 2.** Dependents who experienced a prior COBRA qualifying event such as divorce or loss of dependent status may continue COBRA, but are not subsidy eligible due to the employee's later involuntary termination and subsequent loss of coverage. *See* IRS Notice 2009-27, Q&A-15, <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.

# Group Leader Bulletin



**BlueCross BlueShield  
BluePlus  
of Minnesota**  
Independent licensees of the Blue Cross and Blue Shield Association

April 2009

Bulletin G3A09

*Please read this carefully: Action may be required by April 18, 2009.*

This bulletin is an update to our March 2009 bulletin about COBRA subsidy administration. Please replace our March 2009 COBRA information with this information.

## Department of Labor issues new model COBRA notices

On March 19, 2009 the Department of Labor (DOL) published new model COBRA notices to assist in the administration of the new COBRA subsidy laws. We are providing this bulletin to help our groups make decisions and take action with regard to these new model notices. We are also providing updated background information that you may have received in a Group Leader Bulletin dated March 2009 to ensure that all groups have access to the information they need.

### **This bulletin applies to most Minnesota groups**

This is a special Group Leader Bulletin for employers that are subject to federal COBRA laws and to small employer groups subject to Minnesota continuation laws. Employers must decide for themselves, based on their employment records, whether they are subject to federal COBRA laws or subject to Minnesota continuation laws.

- Federal COBRA applies to employers that normally employed 20 or more full- and part-time employees, regardless of hours worked, on a typical business day during the preceding calendar year.
- Minnesota continuation applies to insured employers that normally employed fewer than 20 full- and part-time employees on a typical business day during the preceding calendar year.

*Please note that we have prepared a special Group Leader Bulletin for employers who participate in Service Cooperatives. This bulletin does not consider the unique characteristics of Service Cooperatives.*

### Contents

Important sources of information.....	2
Questions .....	2
Blue Cross issues revised COBRA notices.....	2
Employers must take action.....	2
Special Extended Election Notice required by April 18.....	3
New notices contain instructions.....	3
Penalties.....	3
Notifying employees of alternatives to COBRA .....	4
COBRA subsidy law and eligibility .....	4
Groups that must comply.....	4
Employers not affected.....	4
Eligibility requirements .....	4
Effective date .....	5
Special election period .....	5
Income consideration .....	5
Dependent eligibility.....	5
How the subsidy will be delivered.....	6
How is the subsidy calculated? .....	6

## Important sources of information

Regulations surrounding the COBRA subsidy administration may continue to change. Please monitor federal websites and [bluecrossmn.com](http://bluecrossmn.com) for updated information.

- Blue Cross and Blue Shield of Minnesota information can be found at [bluecrossmn.com](http://bluecrossmn.com) under “for employers” or by searching on “COBRA for employers.” You’ll also find links to the Department of Labor and the IRS.
- Department of Labor and Employee Benefits Security Administration updates can be found at [www.dol.gov/ebsa/COBRA.html](http://www.dol.gov/ebsa/COBRA.html).
- The IRS has details on the subsidy, as well as modified quarterly payroll tax forms and instructions, at [www.irs.gov/newsroom/article/0,,id=204505,00.html](http://www.irs.gov/newsroom/article/0,,id=204505,00.html).
- Of special importance: the IRS just recently posted Notice 2009-27, “Premium Assistance for COBRA Benefits,” with a summary and Q&A that answers many detailed questions they have collected since February 17. This notice is available at <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>.
- The CMS web page with subsidy information for government plans can be found at [www.cms.hhs.gov/COBRAContinuationofCov/](http://www.cms.hhs.gov/COBRAContinuationofCov/).

## Questions

If you have any questions about the information in this *Group Leader Bulletin*, please contact the group leader line at (651) 662-1725 or toll free at 1-877-293-7035.

## Blue Cross issues revised COBRA notices based on federal models

The model COBRA notices released on March 19 consist of two parts: the application for COBRA and a new explanation and application for the subsidy.

Blue Cross has redesigned its COBRA election notice to include all of the information in the new model notices and covers the requirements described below. Individuals must apply for, and employers must authorize the subsidy on, special “Request for Treatment as an Assistance Eligible Individual” forms included in the DOL model notices and the revised Blue Cross COBRA election forms.

We now have three new forms for employers to use, found at [bluecrossmn.com](http://bluecrossmn.com) under “for employers” or by searching on “COBRA for employers.”

1. **COBRA & Continuation Election Notice, Full Version (Form X17368)** – A full version for newly terminated employees who have not yet received their COBRA notice
2. **COBRA & Continuation Election Notice, Abbreviated Version (Form X17370)** – An abbreviated version for individuals terminated on or after September 1, 2008 who are currently on COBRA
3. **COBRA Special Extended Election Notice (Form X17369)** – A special extended election notice for employees terminated on or after September 1, 2008 who either did not elect COBRA or elected and subsequently dropped COBRA and who now have a new opportunity to enroll

**Groups with fewer than 20 employees** must use the Blue Cross notices so that Blue Cross can properly document eligibility in our role of subsidy reimbursement recipient.

**Groups with 20 or more employees** may use the Blue Cross notice or any other notice that complies with their own need for documentation as subsidy reimbursement recipient.

## Employers must take the following actions

**For individuals who have not yet received COBRA notices: New COBRA notice with applications (full version) is required.**

**All groups:** For all individuals who lost coverage due to a recent employee termination or other qualifying event and have not yet received their COBRA election notices and applications, and for all individuals who lose coverage prior to or on December 31, 2009, employers must provide modified COBRA notices and applications that include information about the subsidy and applications for the subsidy. *Groups of fewer than 20 employees must use the Blue Cross full COBRA notice mentioned above. Larger groups may use the Blue Cross form or any form that complies with the new DOL model notices.*

**For individuals currently on COBRA: Supplemental notice (abbreviated version) required as soon as is reasonably possible**

**All groups:** For all individuals who lost coverage due to a recent employee termination or other qualifying event on or after September 1, 2008, and who elected COBRA — or who recently lost coverage and are still within their election period — employers must now provide separate supplemental notices to these individuals that describe the new premium subsidy. The DOL general model notice (Abbreviated version) has been prepared for this purpose. *Groups of 20 or fewer employees must use the Blue Cross abbreviated COBRA notice mentioned above.*

The employer must also notify the individual of the right to change coverage options if that choice is allowed.

Blue Cross **will** allow coverage changes for all its fully insured groups, so the coverage change forms must be included to eligible individuals if they are fully insured. Employers that are self-insured may choose not to allow coverage changes and may delete information relative to that choice. (See the last section of this bulletin for more information on notifying individuals of their right to change coverage options.)

**Special Extended Election Notice required by April 18, 2009**

**For groups of 20 or more employees:** Employers with 20 or more employees must send a notice of a special extended election period for employees and their spouses and dependent children terminated for any reason other than gross misconduct on or after September 1, 2008. These individuals may apply for COBRA and the subsidy. This applies to employees involuntarily terminated who were eligible for but did not elect COBRA — or who elected COBRA and dropped it (and their spouses and dependent children.) **The employer must send this special election period notice by April 18.** The individuals then have 60 days to complete and return the notice as instructed on the election form. *You may use the Blue Cross "special extended election period" COBRA notice for this purpose.*

**Special note for groups with fewer than 20 employees** Because groups of 19 or fewer employees are subject to state continuation law and *not* federal COBRA law, the special election period described here does not yet appear to apply to these groups. *A bill in the Minnesota legislature*

*that would modify the Minnesota continuation laws to add a special election period similar to the new federal law has not been enacted but is considered very likely to pass within days.*

**New notices contain instructions**

The DOL model notices and the Blue Cross COBRA election notices include instructions for the applicant's proper return of the completed forms. It is very important that the entity eligible to receive tax credit for the subsidy has record of the completed forms as an audit trail. *Employers with 19 or fewer employees MUST return the completed forms to Blue Cross. We cannot adjust the premium for an employee, nor claim the subsidy, until we receive the completed and authorized notices, which include the COBRA election Request for Treatment as an Assistance Eligible Individual forms.*

**All notices provided in compliance with the new law must include the following:**

- A prominently displayed description of the individual's right to a reduced premium and any conditions on entitlement to such a reduced premium
- A description of the individual's right to change coverage if the employer permits the individual to change coverage
- Description of any applicable special election period that might apply
- Any forms necessary to establish eligibility for premium subsidy and for changing coverage if the employer allows coverage changes
- Name, address, and phone number to contact plan administrator(s) or another person maintaining relevant information in connection with the subsidies
- Explanation of the requirement to notify the plan of any subsequent eligibility for coverage under another group health plan and/or Medicare

**Penalties**

Failure to send a timely COBRA election notice could subject the employer or plan to a penalty of up to \$110 per day under ERISA section 502 (c)(1). Failure to comply with the new election notice requirements could also result in adverse tax consequences.