



April 16, 2009

## MEMORANDUM

**To:** All Payroll Locations

**From:** State Health Benefit Plan (SHBP)

**Subject:** **American Reinvestment and Recovery Act (ARRA) Consolidation Omnibus Budget Reconciliation Act Provisions (COBRA) - Next Steps for Payroll Locations**

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As was mentioned in our March 24, 2009 memo, the Georgia Department of Community Health (DCH) is the administrator of the SHBP for COBRA purposes and will manage the entire COBRA subsidy and reimbursement process under the ARRA. As stated in that memo, under ARRA, only *Assistance Eligible Individuals* are allowed to buy COBRA coverage for a reduced premium.

During the week of April 13, 2009, SHBP mailed out COBRA rights notices and the enclosed *Application for Treatment as an Assistance Eligible Individual* to former members who experienced COBRA qualifying events on or after September 1, 2008. Many of these members are NOT *Assistance Eligible Individuals* because they did not lose SHBP coverage as a result of an involuntary termination of employment, and many of these members may ask you questions.

In order to avoid confusion, please review this memorandum and the enclosed *Application for Treatment as an Assistance Eligible Individual* carefully. Whenever an employee or former employee asks about completion of this form, you can tell him/her the Human Resources Manager, or other staff member with ultimate authority for implementing employment decisions, must complete the Payroll Location Section on this application and return the application for submission to SHBP. Until January 1, 2010, you may want to give the application to any employee whose employment is terminated.

### **What Should Payroll Locations Do?**

A. Double-check that you have notified the SHBP of all employees or former employees who have experienced one of these qualifying events on or after September 1, 2008:

- 1) Termination of employment for any reason, including layoff
- 2) Death of employee
- 3) Reduction in employee's hours that prevents payment for coverage with salary reductions or makes the employee no longer classified as a full-time employee
- 4) Start of Leave without Pay for any reason
- 5) Loss of eligibility for coverage under FMLA leave rules (due to end of 12 weeks) and failure to return to work as a full-time employee

- 6) Loss of eligibility for coverage under personal medical leave rules (due to self-employment or employment by another party, end of personal illness or disability, or end of the period for which the leave was approved) and failure to return to work as a full-time employee
- 7) Loss of eligibility for military leave (due to return from military service, exigency leave or service member care leave) and failure to return to work as a full-time employee
- 8) Loss of eligibility for educational leave or leave for the convenience of the employer (due to self-employment or employment by another party, or end of the approved period,) and failure to return to work as a full-time employee

B. Review your processes and re-train employees as necessary in order to make sure you are able to continue notifying SHBP of these qualifying events as soon as possible, but at least within 30 days of the event. *Remember, state law requires Payroll Locations to notify the SHBP of these events within thirty (30) calendar days following the event. **If the SHBP pays any claims or incurs any penalties as a result of the Payroll Location's failure to meet this deadline, the Payroll Location must reimburse the SHBP in full.*** See SHBP Regulations 111-4-1-.08(m)(1), (6); 111-4-1-.02(3)(g).

C. Review the *Application for Treatment as an Assistance Eligible Individual* Form included with this memorandum. Train Human Resources Management personnel to do the following:

- 1) Complete the Application right away when an employee or former employee requests it
- 2) Keep a copy of the completed application showing the date on which it was completed, and return the original to the employee or former employee for submission to the SHBP
- 3) Answer any questions the SHBP asks about the application and your answers

### **What Should Payroll Locations AVOID Doing?**

D. To comply with federal and state law, Payroll Locations should not impede DCH's administration of the COBRA subsidy rules.

- 1) Do not send any COBRA premium payment to the SHBP
- 2) Do not collect any COBRA premium payment from any employee or dependent
- 3) Do not change your federal payroll tax payments or reporting as a result of any COBRA election
- 4) Do not develop or provide any communications about COBRA subsidy rules or COBRA rights related to SHBP. Instead, refer to the SHBP Web site
- 5) Do not prevent or discourage anyone from completing an Application for Treatment as an Assistance Eligible Individual
- 6) Do not prevent or discourage anyone from appealing a denial of the application to the Department of Health and Human Services (HHS)

## What will DCH Do?

E. The DCH will do the following:

- 1) Accept COBRA premiums;
- 2) Send notifications about the COBRA subsidy rights;
- 3) Make decisions about who is an *Assistance Eligible Individual*” entitled to COBRA at 35 percent of the normal COBRA premium rate (denials may be appealed directly to the HHS;
- 4) Notify individuals who submit the Application for *Treatment as an Assistance Eligible Individual* of the SHBP’s decision and their right to appeal the result to HHS
- 5) Provide COBRA coverage under the SHBP; and
- 6) Obtain the remaining 65 percent of the premium from the federal government by reducing payroll tax payments.

Sample copies of other documents that the former members will receive include detailed guidance from the IRS (mostly in the form of Q&As regarding premium assistance for COBRA continuation covering topics such as involuntary termination and eligibility for assistance, and are available at [www.dch.georgia.gov/shbp](http://www.dch.georgia.gov/shbp) under Latest News.

Listed below are a few examples of what is/is not involuntary termination from the IRS guidelines:

**Q.** Does an involuntary termination include a layoff period with a right of recall or a temporary furlough period?

**A.** Yes. An involuntary reduction to zero hours, such as leave without pay for the employer’s convenience, a lay-off, furlough, or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of the premium reduction.

**Q.** Does an involuntary termination include a reduction in hours?

**A.** Generally no. If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. If the reduction in hours causes a reclassification of the employment, or prevents the payment of health coverage with salary reductions, then the reduction in hours would cause a loss of eligibility for coverage. In that case, the employee could elect COBRA coverage, but would not be able to pay the reduced premium. However, an employee’s voluntary termination in response to an employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

**Q.** Does involuntary termination include an employer’s action to end an individual’s employment while the individual is absent from work due to illness or disability?

**A.** Yes. Involuntary termination occurs when the employer takes action to end the individual’s employment status (but mere absence from work due to illness or disability before the employer has taken action to end the individual’s employment status is not an involuntary termination).

**Q.** Does an involuntary termination include a resignation as the result of a material change in the geographic location of employment for the employee?

**A.** Yes.

**Q.** Does an involuntary termination include retirement?

**A.** If the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services, and the employee had knowledge that the employee would be terminated; the retirement is an involuntary termination.

Please contact Bill Tierney at [btierney@dch.ga.gov](mailto:btierney@dch.ga.gov) with any questions.

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