

This posting is in response to questions raised at the June 25, 2009 Legal Update about COBRA and the ARRA COBRA subsidy.

Q. Are employers are required to provide COBRA continuation coverage for dental and vision plans?

A. Yes. Dental and vision plans are covered under COBRA.

COBRA and the federal regulations under COBRA provide that COBRA applies to “group health plans.” The regulations define group health plan as “a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families.” *26 C.F.R. 54.4980B-2 at A-1(a)*. The regulation goes on to state that “health care” means the same thing as “medical care” under *26 U.S.C. 213(d)*. Under that statute, medical care includes amounts paid “for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body.” The title of that section of the statute includes the term “dental”. The statute does not list all of the types of plans which fall within this definition, but dental and vision plans would fall within this definition, as would any separate prescription drug plan. If the employer maintains separate dental and vision plans, the employee who experiences a qualifying event should have the opportunity to choose which plans he or she would like to continue.

Q. The second question concerned the relation of the COBRA subsidy under the American Recovery and Reinvestment Act of 2009 to the payment of COBRA premiums. Where previously an employee who enrolled in COBRA had to pay 100% (or 102% with the added administrative fee) of the premium, the subsidy allows assistance eligible individuals to pay only 35% of the monthly premium while the federal government subsidizes the remaining 65%. But, what happens when the employer agrees to pay a portion of the employee’s COBRA premium?

A. If the employer pays a portion of the COBRA premium, the employee must still pay 35% of the portion of the premium that the employer does not pay. The government would then subsidize the remaining 65% of the portion that the employer does not pay. The following example illustrates how this works: The monthly COBRA premium is \$1,000. However, the employer agrees to pay \$500 of that premium, leaving the employee portion at \$500. If the employee is eligible for the subsidy, she must pay 35% of \$500 or \$175. The employer would pay the remaining 65% or \$325 and would be reimbursed by the government for this amount. The employer would not be reimbursed for the \$500 that it agreed to pay toward the premium.