

**Client Seminar on COBRA Premium Assistance
Question & Answer Session
Thursday April 9, 2009**



1. What acts would be considered “gross misconduct” thus making an individual ineligible for the COBRA premium assistance?

COBRA legislation does not define the term "gross misconduct," and courts have not agreed on when it is proper to apply this exception to the COBRA rules. However, the following is a definition widely used by the courts:

“Acts of gross misconduct are intentional, wanton, willful, deliberate, reckless, or in deliberate indifference to an employer's interest. Often, acts that will prompt an employer to terminate an employee are those done in deliberate violation of the employer's known standards.”

However, those acts may not constitute gross misconduct for COBRA purposes unless they go beyond simple negligence or incompetence. Employers who terminate workers for gross misconduct may run the risk of being sued for wrongfully denying COBRA benefits. Therefore it is critical that your policies and procedures clearly define and support your actions. Various examples of gross misconduct include:

- Illegal or dangerous acts committed in the workplace
- Fighting or workplace violence or threat of violence
- Being under the influence of alcohol or drugs while on the job
- Stealing, misappropriating funds, embezzlement
- Harassing people
- Racial or sexual harassment
- Repeatedly disobeying reasonable management instructions/rules/protocols

2. Is a positive drug test considered gross mis-conduct?

A positive drug test could be considered gross misconduct if your policies and procedures define it as such.

3. What is considered a small group? For the COBRA Subsidy Assistance a small group is defined as a group that has 20 employees for at least 26 weeks out of the year. For small groups 20 and under Sanford Health Plan is responsible for paying the 65% of the subsidy through payroll tax credit (not the employer).

4. When is Health Plan expected to mail notices to identified COBRA members? Letters will begin to be mailed on Monday, April 13th with all letters mailed by Friday, April 17.

5. Would a program such as Avesis (A type of vision Discount program) be considered coverage eligible for the COBRA premium assistance program? No, discount programs are not eligible. Neither are FSAs under Section 125 plans. Eligible coverage includes plans governed by ERISA: group health plans, medical, dental, vision, HRAs, FEHBP, state continuation plans, and some EAPs.

- 6. Will Sanford Health Plan be sending a separate billing to the employer?** Yes, Sanford Health Plan will bill the employer *after* we receive the COBRA premium payment from the member.
- 7. If you have a member who terminates their employment in August of 2008 would they be eligible for the COBRA Subsidy?** No they would not be eligible. An *Assistance Eligible Individual (AEI)* is a COBRA qualified beneficiary who:
- i. Is eligible for COBRA between Sept. 1, 2008 through Dec. 31, 2009;
 - ii. Elects COBRA; and
 - iii. Has a QE of “involuntary termination” of employment during this period.
- Both the involuntary termination and the beginning of COBRA *eligibility* must occur between Sept. 1, 2008 through Dec. 31, 2009.
- 8. Do all the other normal time lines and dates still apply for COBRA under this subsidy?** Yes, a member is still eligible for COBRA for 18 months after losing their job, but you will only receive the subsidy for 9 months.
- 9. If you have medical/dental/vision with your current employer could you unbundle this products and just get the vision portion as a subsidy?** For Sanford Health Plan fully-insured plans we do not unbundle our products. Self-funded clients may choose to unbundle their products and this circumstance Sanford Health Plan would offer COBRA accordingly.
- 10. If your employer offered you a reduction in hours would the employee be eligible for the subsidy?** Generally, no. (see [IRS Notice 2009-27 Q&A #3](#)) If the reduction in hours is not a reduction to zero, the mere reduction in hours is not an involuntary termination. 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 employer relationship for the employee.
- 11. Are the employee’s dependents eligible for the subsidy?** Yes.
- 12. If the husband loses his job and his wife has a group policy available at her work place is the husband eligible for the subsidy?** No, he is not eligible because his wife does have group coverage that he could elect.
- 13. If the husband loses his job but is eligible for Medicare is he eligible for the subsidy?** No, he would need to elect Medicare.