

## **SCHIP AND COBRA AMENDMENT**

We are providing this amendment to amend Cafeteria Plans and Self-Funded Plans to comply with the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (State Children's Health Insurance Program (SCHIP)) and the COBRA provisions of the American Recovery and Reinvestment Act of 2009 (ARRA).

### **Are cafeteria plans and self-funded plans required to be amended for SCHIP and COBRA?**

Amendments are required to comply with the SCHIP changes for self-funded plans; although cafeteria plan language with change in status probably would cover the change compelled by SCHIP, the participants should receive an SMM that clarifies the changes, so we have included SCHIP language.

It is not clear that a plan amendment is required to comply with ARRA COBRA provisions. Those provisions are temporary, and while they require certain notices to be provided to eligible individuals, they do not specifically require that the plan document must contain these provisions. In addition, there are significant questions about how some of the provisions of the new law should be interpreted, and the government has not provided sufficient guidance in these areas. However, to avoid confusion and inconsistency with current plan documents, we have prepared a general amendment that incorporates the terms of the requirements.

### **Does an employer need to modify or make any elections in the amendment?**

You will need to fill in certain spaces and remove any provisions in the SMM that do not apply.

### **When do the amendments become effective?**

The SCHIP Provisions become effective April 1, 2009.

The COBRA provisions under ARRA become effective on the first day of the first "period of coverage" under COBRA that becomes effective after February 17, 2009. The "period of coverage" is the monthly (or shorter) period of coverage for which premium payments are required. For most plans, this period of coverage starts on the first day of the month, so the new provisions were effective March 1, 2009. For plans that charge for COBRA coverage on a monthly anniversary date, the provisions will become effective on the first day after February 17, 2009 for which a COBRA payment is due. For example, if the plan charges COBRA premiums on the basis of a monthly anniversary and an employee is involuntarily terminated on February 16, 2009, the effective date is the first day of the coverage period, which for that employee was March 16, 2009.

In addition to the amendment, we have provided a sample Corporate Resolution (for an employer to adopt the amendment) and a sample Summary of Material Modifications (SMM).

## SCHIP AND COBRA AMENDMENT

### ARTICLE I PREAMBLE

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to Luther College to reflect certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (State Children's Health Insurance Program (SCHIP)) and the American Recovery and Reinvestment Act of 2009 (ARRA). The sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 or 3.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

### ARTICLE II SPECIAL ENROLLMENT RIGHTS

- 2.1 **Effective Date.** This Amendment is effective as of April 1, 2009.
- 2.2 **Special Enrollment Rights.** The Plan is amended to allow for special enrollments rights in the event a Participant or his or her eligible Dependent (1) loses coverage under Medicaid or a state child health program, or (2) becomes eligible for state assistance with respect to paying his or her contributions to the Plan, as follows:

**Special enrollment rights.** A Participant may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (SCHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

### ARTICLE III COBRA

- 3.1 **Effective Date.** This Amendment is effective as of March 1, 2009.
- 3.2 **COBRA provisions.** The Plan's provisions concerning COBRA are amended as provided below to allow for (1) payment of reduced premiums and the provision of a second election period by certain COBRA qualified beneficiaries, (2) the provision for additional COBRA notices, and (3) an exception to the rules for crediting certain prior coverage. This amendment does not apply to a health flexible spending account.

SCHIP and COBRA Amendment

The COBRA continuation coverage provisions of the Plan shall be administered in accordance with the requirements of ARRA Section 3001 with respect to “assistance eligible individuals,” as defined in ARRA Section 3001(a)(3). Notwithstanding any other Plan provision to the contrary, the Plan shall determine whether an individual has had a 63-day break in coverage for purposes of determining creditable coverage under the Health Insurance Portability and Accountability Act (HIPAA), in accordance with the terms of ARRA Section 3001.

This amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Employer:

Luther College

By: \_\_\_\_\_  
EMPLOYER

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of Luther College hereby certifies that the following resolutions were duly adopted by Employer on \_\_\_\_\_, \_\_\_\_\_, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the Luther College Health Plan is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
*[print name/title]*

**SUMMARY OF MATERIAL MODIFICATIONS  
for the**

Luther College

(1) **General.** This is a Summary of Material Modifications regarding the above referenced Plan ("Luther College"). This Summary of Material Modifications supplements and amends the Summary Plan Description (SPD) previously provided to you. You should retain this document with your copy of the SPD.

(2) **Identification of Employer.** The legal name, address and Federal Employer identification number of the Employer are:

Luther College

EIN: 42-0680466

700 College Drive

Decorah, IA 52101

(3) **Description of Modifications.** The Employer has amended your Plan effective as of April 1, 2009 to allow the following:

Special Enrollment Rights under SCHIP

If an Employee has declined enrollment in the Plan for him or herself or his or her dependents (including a spouse) because of coverage under Medicaid or the Children's Health Insurance Program, there may be a right to enroll in this Plan if there is a loss of eligibility for the government-provided coverage. However, a request for enrollment must be made within 60 days after the government-provided coverage ends.

In addition, if an Employee has declined enrollment in the Plan for him or herself or his or her dependents (including a spouse), and later becomes eligible for state assistance through a Medicaid or Children's Health Insurance Program which provides help with paying for Plan coverage, then there may be a right to enroll in this Plan. However, a request for enrollment must be made within 60 days after the determination of eligibility for the state assistance.

If you have any questions regarding the application of this provision to you, contact the Plan Administrator.

(4) **Description of Modifications.** The Employer has amended your Plan effective as of March 1, 2009 to allow the following:

The 2009 American Recovery and Reinvestment Act (ARRA) provides for a reduction of COBRA premiums for group health plans other than health flexible spending accounts. If you are an "assistance eligible individual," there will be a 65% reduction in your COBRA premiums for up to nine months. An "assistance eligible individual" is a qualified beneficiary who:

- Becomes eligible for COBRA coverage at any time during the period beginning September 1, 2008 and ending on December 31, 2009 and:
  - Elected coverage during the original COBRA election period; or
  - Elects COBRA within 60 days of receiving the additional COBRA election notice described below; AND
- The COBRA qualifying event is the employee's involuntary termination during the period of September 1, 2008 to December 31, 2009.

However, if you are eligible for other group health coverage, including a spouse's plan or Medicare, you are not eligible for the premium reduction. There is also no premium reduction for periods of coverage that started prior to February 17, 2009.

If you have already elected COBRA, you must apply for the premium reduction. You will receive a notice from the Plan describing how to apply.

If your qualifying event was an involuntary termination that occurred on or after September 1, 2008 and before February 17, 2009, and you either did not elect COBRA during your original COBRA election period, or you elected COBRA and then dropped the coverage, you may have the right to elect COBRA now at the reduced premium rate. You will receive an additional COBRA election notice from the Plan describing how to apply for this coverage. If this second election period applies to you and you elect COBRA within the 60 day election period, then any gap in coverage from the date of your original qualifying event and the effective date of your COBRA coverage will be disregarded for purposes of determining any pre-existing conditions limitations that may apply.

If you are determined to be eligible for the reduced premium and you become eligible for any other core group health coverage or Medicare, you **MUST** notify the Plan in writing. If you do not, you may be subject to a tax penalty equal to 110% of the premium reduction.

You should note that electing the premium reduction disqualifies you for the Health Coverage Tax Credit. If you are eligible for the Health Coverage Tax Credit, which could be more valuable than the premium reduction, you will have received a notification from the IRS.

You should also know that the amount of the premium reduction is phased out for certain high income individuals. If the amount you earn for the year is more than \$125,000 (or \$250,000 for married couples filing a joint federal income tax return) all or part of the premium reduction may be recaptured by an increase in your income tax liability for the year. If you think that your income may exceed the amounts above, you may wish to consider waiving your right to the premium reduction. However, your waiver is irrevocable and permanent, which may affect your ability to claim the premium reduction in the next tax year. For more information, consult your tax preparer or visit the IRS webpage on ARRA at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>

If you request to be treated as an assistance eligible individual and are denied this treatment, you have a right to appeal to the Department of Labor.