

COBRA: CONTINUATION OF GROUP HEALTH COVERAGE

SUMMARY

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) addresses a variety of issues. To employers, however, it is probably best known for its Title X provisions dealing with health care continuation coverage. COBRA requires employers that sponsor group health care plans for employees to offer qualified beneficiaries the right to elect health care continuation coverage if they lose coverage under a plan as a result of a qualifying event. Employers not in compliance with this federal law can lose their tax deduction of their group health plan as well as be subject to other monetary penalties.

COBRA applies to nearly all U.S. employers that employed 20 or more employees (including part-time employees that may not be eligible for the employer's group health plan) on a typical business day during the preceding calendar year. Compliance with COBRA is required of group health plans that provide medical care on an insured or self-insured basis to employees, former employees, or the families of employees or former employees.

COBRA REQUIREMENTS AT A GLANCE

Generally, COBRA requires that employers allow certain persons, deemed "Qualified Beneficiaries," who would otherwise lose their group health coverage due to certain "Qualifying Events" to continue that coverage for a certain period of time at the group rate.

QUALIFIED BENEFICIARIES

A qualified beneficiary can be:

- A covered employee (including current and former employees, self-employed persons, independent contractors, and other non-traditional employees that are covered under a group health plan).
- A spouse of a covered employee.
- A dependent child of a covered employee.

QUALIFYING EVENTS

For a covered employee, a qualifying event can include:

- Termination of employment (for any reason other than gross misconduct).
- Reduction in hours of employment.
- Employer's filing of bankruptcy (retirees and certain dependents only).

For a spouse or dependent child, a qualifying event can include:

- Termination of employment of a covered employee (other than for gross misconduct) or reduction in hours of employment.
- A covered employee's death.
- A spouse's divorce or legal separation from a covered employee.
- A covered employee's entitlement to Medicare.
- A dependent child's loss of dependent status under the plan.
- An employer's filing of a bankruptcy proceeding.

CONTINUATION PERIODS

COBRA specifies two general continuation periods - 18 and 36 months. The 18 month period may be extended to 29 months, however, if the qualified beneficiary is determined under Title II or XVI of the Social Security Act to be disabled at the time of the qualifying event and if the beneficiary notifies the plan administrator of the disability within 60 days of the determination (see COBRA schedule).

The maximum continuation period for a covered employee's termination of employment or reduction of hours generally requires a maximum coverage period of 18 months from the date of the qualifying event or, if provided under the plan, the date when coverage ceases.

The maximum continuation period is 36 months for qualifying events other than terminations or reduction of hours, with one exception. Retirees, and widows or widowers of retirees, are eligible for COBRA coverage until death if either loses group health coverage as a result of an employer filing for bankruptcy.

TERMINATION OF COVERAGE

COBRA coverage may be terminated prior to the end of the maximum required period if:

- The employer ceases to provide a group health plan to any employee.
- The qualified beneficiary fails to pay premiums required under the plan.
- The qualified beneficiary becomes entitled (covered) to Medicare.
- The qualified beneficiary becomes covered under another group health plan that does not exclude or limit a pre-existing condition of that beneficiary.

NOTIFICATION REQUIREMENTS

COBRA notification requirements fall into four categories:

- The covered employee's or qualified beneficiary's obligation to advise the plan administrator or the occurrence of a qualifying event.
- The obligation of an employer (if the employer is not the plan administrator) to notify the plan administrator of a qualifying event.
- The plan administrator's obligation to inform qualified beneficiaries of their COBRA rights when a qualifying event occurs.
- The responsibility of the plan to notify employees and spouses of their COBRA rights when they first become covered under a group health plan.

ELECTION PERIOD

The period when a qualified beneficiary may elect COBRA coverage begins, at the latest, when coverage terminates

under a plan as a result of a qualifying event. The period must last at least 60 days from the date when coverage terminates as a result of a qualifying event or the date when a beneficiary receives notice of his or her COBRA rights, whichever is later.

Group health plans must offer each qualified beneficiary the opportunity to make an independent election to receive COBRA coverage. The covered employee or spouse, however, can make the election on behalf of other qualified beneficiaries affected by the qualifying event. The decision is binding on all once the choice is made.

PREMIUMS

A group health plan may charge a qualified beneficiary electing continuation coverage a premium of up to 102% of the total cost (employee and employer share) of coverage. The premium can be increased to 150% of the total cost of coverage that extends beyond 18 months in the case of disabled individual receiving COBRA coverage as a result of termination or reduction in hours.

CONCLUSION

COBRA is one of the more complicated government mandates involving employee benefits. Its complexity is underscored by the proposed I.R.S. regulations and numerous legislative changes since the law was first enacted. Until final regulations are issued, employers must implement COBRA in accordance with a "good faith" interpretation of the statute and legislative history.

This notice is general in nature and not intended to apply to a reader's specific situation. Consult legal counsel before taking action with respect to any topics discussed.

This BMA was prepared by John Hancock Mutual Life Insurance Company, Underwriter of the NTMA Group Health Plan.