Understanding COBRA

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Introduction

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) gives covered employees, spouses, and dependent children who lose their group health plan benefits as the result of certain Qualifying Events (QE) the right to elect to continue group health plan coverage for limited periods of time under certain circumstances. Participants and beneficiaries who continue coverage under COBRA are referred to as Qualified Beneficiaries (QB). QBs are generally required to pay the entire premium for coverage plus a 2% administrative fee. As discussed below, COBRA generally applies to employer/plan sponsors with 20 or more employees in the prior year, with very few exceptions. It requires multiple notices from plan sponsors as well as covered participants and COBRA failings can give rise to steep penalties or even liability for claims. This piece provides foundational information on COBRA, including required COBRA notices, and reviews common COBRA issues and concerns for plan sponsors.

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Employers Subject to COBRA

Virtually all group health plans maintained by employers are subject to COBRA. This includes group health plans of private entities, tax-exempt organizations, and state and local governments. While private employers are subject to COBRA under the Internal Revenue Code, non-federal governmental plans (plans sponsored by states, any political subdivision of a state or any agency or instrumentality of the state or political subdivision) are subject to parallel provisions under the Public Health and Service Act (PHSA).

Small Employer Exception

A group health plan is not subject to COBRA for any calendar year if all employers maintaining the plan, as determined *on a controlled group basis* (see Understanding Controlled Group Rules), employed fewer than 20 employees on a typical business day during the preceding calendar year. Specifically, did the employer employ fewer than 20 employees on at least 50% of its typical business days during that preceding year. Only common-law employees are counted for purposes of the small employer exception. This generally excludes self-employed individuals, independent contractors, and

members of a corporate employer's board of directors. Part-time employees count as a fraction of an employee based on the number of hours that the part-time employee works divided by the number of hours that an employee must work to be considered a full-time employee (not more than eight hours a day or 40 hours a week).

If a single employer plan ceases to be a small employer plan because of an increase in its workforce during the current calendar year, the plan becomes subject to COBRA as of the following January 1. Note that with a stock purchase where two small employers combine or where a small employer is purchased by a large employer the small employer exemption is lost immediately on acquisition. This not generally the case with an asset purchase.

Church Plan Exemption

Neither the Code nor PHSA regulate church plans so there is no COBRA requirement for church plans. A church plan is a plan established and maintained by a church or by a convention or association of churches that is exempt from taxation (Code § 501). Importantly, organizations affiliated with churches (e.g., certain hospitals, schools, or universities) may be controlled by or associated with a church closely enough that their employee benefit plans may qualify as church plans and therefore exempt from COBRA. Determining whether a plan is a church plan depends upon a detailed analysis of the activities of the organization and the closeness of the religious affiliation. Many plan sponsors request a church plan determination from the Department of Labor (DOL). Note that a church or a church-related organization that makes a formal election (Code § 410(d)) to become subject to ERISA to obtain certain benefits, such as ERISA preemption and the elimination of certain types of damages, will also be subject to COBRA under that election.

Benefit Options Subject to COBRA

COBRA applies to “group health plans” maintained by covered employers. Although the definition of group health plan differs slightly under COBRA and ERISA the determining factor under both frameworks is whether the plan or benefit provides “medical care” to employees. “Medical care” (as defined in Code §213(d)) includes the diagnosis, cure, mitigation, treatment, or prevention of disease and any other undertaking affecting any structure or function of the body. Common COBRA covered benefits are medical, dental, vision, employee assistance programs (EAPs), HRAs and H-FSA (subject to a limited obligation). Other covered plans include mental health supplements, on-site clinics offering services beyond free minor first aid for injuries and illnesses, concierge care arrangements and wellness plans providing medical care (e.g., biometrics and flu shots). It does not include anything beneficial to the general health of an individual, such as a vacation, fitness facilities, or non-medically mandated meal plans. It does not include income replacement benefits (e.g., disability and indemnity plans) or life insurance. It does not include employee pay all voluntary plans that are not endorsed by the employer as those are considered individual products. It does not include HSAs, which are individual custodial accounts that do not provide medical care and are not considered part of the group health plan.

EAPs present unique COBRA challenges because all employees are generally covered by the EAP on hire without other eligibility criteria or election requirements. To avoid onerous COBRA notice and election requirements as well as managing payment of small monthly premiums, the EAP industry (including certain life or disability carriers that offer EAPs) has developed a “work-around.” Most EAP vendors will automatically offer continued coverage at no cost for any participant who loses access to the EAP for between 18 and 36 months. Although this is not a perfect solution it is advantageous to participants, effectively manages the COBRA risk for employers, and has become a standard practice.

COBRA Qualifying Events and Duration of Coverage

COBRA only applies when covered employees, spouses, and dependent children lose their group health plan benefits as the result of certain listed QEs. The loss in coverage must be attributable to the QE. The type of QE determines who the QBs are for that event and the period of time that a plan must offer continuation coverage.

Termination of Employment or Reduction in Hours (18 months)
The following are QEs for a covered employee, spouse or dependent if they cause a loss of coverage: (1) termination of the employee's employment for any reason other than "gross misconduct"; and (2) reduction in the number of hours of employment below eligibility thresholds. These two QEs trigger a maximum COBRA coverage period of 18 months.

When a covered employee is terminated for gross misconduct, COBRA does not have to be offered to either the employee or any dependents. However, this is a very narrow exception and in the COBRA context (as opposed to how the term is used more generally in employment law) gross misconduct is limited to extreme behavior of the type that could give rise to legal action against the employee (e.g., violent or threating behavior or significant theft or fraud).

Death, Divorce, and Loss of Dependent Status (36 months)
The following are QEs for the spouse and dependent child of a covered employee if they cause a loss of coverage: (1) divorce or legal separation of the spouse from the covered employee; (2) death of the covered employee; or (3) loss of "dependent child" status under the plan (generally age 26 but some state insurance codes mandate extended eligibility). These three QEs trigger a maximum COBRA coverage period of 36 months. Although Medicare Entitlement is also listed as a 36 month QE, Medicare Secondary Payer rules prohibit plans from restricting eligibility based on Medicare eligibility or entitlement. Medicare eligibility or entitlement can cause a loss of coverage for retiree plans. (See below.)

Extending the Maximum Coverage Period
Second or intervening 36 month QEs can extend the original 18 month duration of COBRA for spouses and dependent child only where the first QE was termination of employment or reduction in hours.

> Example: Sue terminates employment and elects COBRA for herself and her son, John, who is age 25. Their maximum coverage period is 18 months. Under the terms of the group health plan, a dependent cease to be eligible upon reaching age 26. John turns age 26 two months after Sue's termination of employment. This constitutes a second or intervening QE because it would cause a loss of coverage if Sue were still employed and if John was a covered dependent. John is therefore entitled to a total of 36 months of coverage measured from the original QE of Sue's employment termination. Sue remains entitled to only 18 months of coverage.

Also, under a disability extension rule, the original 18 month duration of COBRA where the QE was termination of employment or reduction in hours can be extended by 11 months to a maximum of up to 29 months if the following conditions are met: (1) the QB is determined under the Social Security Act to have been disabled at any time during the first 60 days of COBRA coverage; (2) the QB notifies the plan administrator of the Social Security disability determination within 60 days of that determination; and (3) notice is provided to the plan administrator before the end of the 18-month period following the qualifying event (the employee's termination of employment or reduction of hours). The plan can charge QBs an increased premium of up to 150% of the cost of coverage during the 11-month disability extension.

The purpose of the disability extension is to enable an individual to maintain group health plan coverage until he or she becomes entitled to Medicare. Medicare is available for certain people with disabilities who are under age 65 who have received Social Security Disability benefits for 24 months. All QBs get the benefit of the 11 month disability extension. Note, however, that if the disabled QB ceases to be disabled during a disability extension period, COBRA coverage for the disabled QB and all related qualified beneficiaries with extended coverage under the disability extension may be terminated before the end of the extension period.

Early Termination of Coverage

COBRA coverage can terminate before the end of the maximum coverage period for several reasons. COBRA coverage may be terminated, subject to grace periods and other special rules, "as of the first day of any period for which timely payment is not made." If payment is made but the amount due is incomplete coverage may not be terminated for "insignificant" shortfalls. COBRA coverage may also be terminated when the employer plan sponsor no longer offers any group health plan. This includes any group health plans sponsored by all employers within the same controlled group. Note that even where a related employer's plan is of little or no use to a potential QB (e.g., a regional HMO not covering where the individual resides), that plan must still be offered to the QB. Lastly, COBRA coverage may be terminated when a QB subsequently becomes covered under another group health plan or Medicare (see discussion below).

COBRA Notices and Timelines

Initial (or General) Notice and SPD

COBRA rights provided under the plan must be described in the plan's Summary Plan Description (SPD). Although the requirement is for a general description most plans include a copy of the DOL's Model COBRA Initial Notice as that notice contains all critical COBRA requirements.

The COBRA Initial Notice must also be provided to covered employees (and covered spouses) within 90 days of becoming covered under the plan. Including the Initial Notice in the SPD seldom satisfies this requirement as SPDs are not provided to covered dependents. Thus, when an employee covers a spouse, the notice must be mailed to the home and addressed to both parties. Although subsequent guidance would be helpful, a conservative approach for plans covering adult children who do not reside with the employee is to also provide the Initial Notice to such a child. However, this is not expressly required and the parent should still be obligated to report when an adult child reached the limiting age under the plan.

Providing the Initial Notice and proving it was properly furnished is critical to COBRA administration. This is because the plan administrator cannot deny COBRA coverage (or an extension of COBRA coverage) to a QB because of their failure to timely notify the plan of a qualifying event, second qualifying event, or qualified beneficiary's disability (see discussion below, usually 60 days) if the plan has not informed the QB about his or her obligation to provide notice within the specified period.

Notice of Qualifying Events by Employers and Participants

Employers and employees (or covered dependents) have notice obligations under COBRA. An employer plan sponsor, which is always technically the plan administrator, must essentially provide notice to itself upon the death of an employee, the termination of an employee, or a reduction in employee hours that causes a loss of coverage. Technically, the employer has 30 days to provide notice to the plan administrator and the plan administrator then has 14 days to send an Election Notice to affected individuals – these deadlines are combined for practical purposes to 44 days.

Next, employees and covered dependents are required to notify the employer/plan administrator within 60 days of divorce (or formal legal separation) or when a child loses dependent status under the plan. The plan administrator then has 14 days to send an Election Notice. Filing for divorce is not divorce itself and does not constitute legal separation, which requires a separate court order and is relatively rare. Coverage is lost when the divorce is finalized. In the case of divorce, COBRA can be denied to a former spouse that does not timely come forward as long as the employer can prove the COBRA Initial Notice was properly furnished (mailed to the home addressed to both parties).

A common scenario is when an employee drops a spouse at open enrollment "in anticipation" of divorce. In such cases, the spouse may still be eligible for COBRA even without being covered by the plan immediately before the QE. The former spouse must still come forward within 60 days of when the divorce is finalized and the 36 month COBRA coverage period will run from the date of divorce.

Another common occurrence is for an employee not to report that she or he divorced his spouse for several months, allowing the spouse to remain covered. Former spouses are not eligible for benefits (outside of a Massachusetts insurance code provision) so when an employee or former spouse fails to timely come forward and report a divorce it is deemed an "automatic drop" under the Cafeteria Plan retroactive to the date of the divorce regardless of Cafeteria Plan deadlines to request a drop of coverage. Affordable Care Act (ACA) rules prohibiting recissions or retroactive terminations of coverage do not apply because the proper COBRA premium was not paid after the spouse lost eligibility. Also, if the employer can prove it mailed the Initial COBRA notice to the employee's home addressed to the employee and the spouse, it does not need to offer COBRA. This can be complicated if the spouse has incurred claims and coverage is terminated retroactively and may require coordination with carriers, TPAs and stop loss providers.

COBRA Election Notice and Correcting Missed Notices

The DOL maintains a Model Election Notice that should be used by plan administrators. Employees and covered dependent have 60 days to elect COBRA after the Election Notice is provided. QBs are only offered the opportunity to elect medical plans in force as of the day before the QE. However, they are treated like active employees at open enrollment so can change benefit options or elect new lines of coverage.

Late or missed Election Notices are a common problem. If the plan administrator sends the Election Notice shortly after the notice deadline but misses the 44 or 14 day window there should generally not be adverse legal consequence to the plan. However, where Election Notices are very late or not provided at all there can be significant liability. If a potential QB was never provided an Election Notice and then incurred claims the group health plan could be liable for those claims. There are also significant statutory penalties of up to $110 per day for notice failures if the plan cannot prove that it was able to put the QB in as good a position as he or she would have been in absent the notice failure.

With respect to a late Election Notice, the correction is generally to send the COBRA Election Notice with a cover letter explaining the administrative error that resulted in late notice and providing 60 days to elect COBRA. Plan administrators will need give QBs the option of electing retroactively back to the date coverage was lost but with an offer to work with the QB on paying back premiums. Some employers may even reduce the amount due for retroactive COBRA coverage. An option that can be offered alongside this standard correction is to let the QB elect to continue coverage on a moving forward basis for the remainder of the COBRA coverage period (i.e., the remainder of either 18 or 36 months measured from the date coverage should have been lost). COBRA administrators should be able to assist with most of these mechanics. Again, it is important for plan administrators to

communicate with carriers and/or stop loss providers on these issues and proposed solutions as their approval is often required.

Notice of Unavailability and Early Termination

A plan administrator is required to provide a notice that COBRA coverage is unavailable to certain individuals who may expect to receive COBRA coverage or an extension of COBRA coverage. A Notice of Unavailability is required if the plan administrator receives one of the following notices but determines that the individual in question is not entitled to COBRA coverage or an extension of COBRA coverage: (1) a notice that a QE has occurred; (2) a notice that a second QE has occurred; or (3) a notice that an individual has been determined by the Social Security Administration to be disabled. The notice must explain why COBRA coverage or an extension is not available.

When COBRA coverage terminates before the end of the maximum coverage period, the plan administrator must also provide a written notice of Early Termination to each affected qualified beneficiary.

COBRA Premiums and Payment Deadlines

QBs are charged the "applicable premium" for COBRA, which is the full cost of coverage plus a 2% administrative fee. All plans must determine the applicable premium in advance for each 12-month determination period and may not increase the applicable premium during the determination period. Most plans use the plan year as the determination period. Importantly, QBs who have elected COBRA can make changes to their COBRA elections during open enrollment or if they experience a HIPAA special enrollment right event (marriage, birth, adoption, loss of other coverage) and the applicable premium for any different benefit option they choose can be charged even if that is a cost increase.

For an insured plan, the applicable premium is the cost to the plan for coverage charged by the insurance carrier. A self-funded plan's applicable premium may be either a reasonable estimate of the cost of providing coverage determined on an actuarial basis or based on the "past cost" to the plan for the preceding determination period (with a cost-of-living adjustment) if coverage under the plan has not significantly changed from the preceding determination period. However, in most cases an actuarial determination is necessary. Although this is a similar determination to budgeting for a self-funded plan, the COBRA applicable premium cannot include costs like an employer's HSA funding.

Most COBRA administrators manage COBRA premium payments and deadlines. The initial premium payment is due 45 days after election. The deadline for subsequent premiums typically is the first day of the month for a period of coverage. However, under a grace period rule, the premium need not be paid until the expiration of a 30 day the grace period. As noted above, failure to timely pay premiums will result in loss of COBRA coverage with the exception of insignificant shortfalls.

COBRA and Domestic Partners

Only employees, spouses, and dependent children can be QBs under COBRA. Domestic partners, therefore, will not have independent COBRA rights, even if they are recognized as dependents under the plan. Although domestic partners do not have independent COBRA rights, an employee who loses coverage and is offered COBRA can still cover a domestic partner as a dependent by electing the employee plus one (or plus dependent) tier of COBRA coverage. A domestic partner who loses eligibility for coverage due to dissolution of a domestic partnership or death of the employee cannot independently elect COBRA. To address this issue some employers choose (subject to carrier/stop loss approval) to offer COBRA-like continuation coverage to domestic partners. Employers choosing to offer COBRA-like benefits to domestic partners generally follow the same coverage, notice and

premium rules for ease of administration. Note that employers subject to state mini-COBRA regulations may have additional obligations with respect to domestic partners.

COBRA Issues with H-FSAs

H-FSAs are group health plans that are subject to COBRA. However, after enactment of the ACA all H-FSAs are structured as excepted benefits (offered only to employees eligible for major medical and employer contributions are limited to the greater of $500 or a match of the employee's salary reduction amount). This means they have a limited COBRA obligation. Specifically, COBRA only needs to be offered to underspent accounts and then only for the duration of the plan year (plus any grace period, which is an additional 2.5 months after the end of the plan year to incur additional eligible claims). In determining whether an account is underspent, we look at the total COBRA premium that would be paid for the account (the monthly salary reduction election + 2%) for the remainder of the coverage period (plan year) as compared to the balance remaining in the account. This significantly limits the COBRA obligation and thus limits administrative costs.

Carryovers became an optional addition to H-FSAs in 2014 and can be offered up to $550 (not show with annual indexing) as an alternative to a grace period. However, carryovers complicate the limited COBRA obligation in two ways. First, in determining whether an account is underspent we must include any carryover amounts in the balance but when we compare the balance to the COBRA premium that would be paid for the remainder of the coverage period, we only base the COBRA premium on the current year's salary reduction election. This means that many more accounts will be underspent and more COBRA offers made. Second, if a carryover is available to active employees it must be available to COBRA QBs on the same terms. This can extend the COBRA coverage period past the end of the plan year. To address these issues employer can limit carryovers to employees that make an H-FSA election in the subsequent year and limit the carryover duration to one year.

> Example: Bill has elected to salary reduce $2,400 to fund his calendar year H-FSA. He terminates employment on May 31. At that time, he had been reimbursed for $1,100. The maximum amount available for reimbursement for the remainder of the plan year is $1,300. The COBRA premium for the remainder of the plan year is $204 per month for a total of $1,428 for the remaining 7 months. The account is overspent because the total COBRA premium exceeds the maximum amount available for reimbursement. COBRA does not need to be offered. However, if Bill had a $500 carryover from the prior plan year the result would be different. The maximum amount available for reimbursement would be $2,000 ($3,100 -$1,100) but the carryover amount does not get included in the calculation of the COBRA premium. Because the total COBRA premium for the remainder of the plan year is still $1,428 and that is less than the $2,000 maximum amount available for reimbursement the account is underspent and COBRA must be offered.

COBRA Issues with HRAs

HRAs are group health plans that are subject to COBRA. Applying COBRA rules to HRAs raises special challenges, most notably the amount of coverage that should be made available and how to determine the appropriate cost of that coverage (the COBRA applicable premium). Note that these rules apply to specialized HRAs, like fertility HRAs, with increased compliance concerns in that context.

Independent election rights

One of the basic principles of COBRA is that each QB has an independent right to elect COBRA. This can be complicated in the context of HRA coverage. In theory, each QB may have the right to elect

COBRA coverage in the full amount available under the HRA. In other words, a termination of employment that affects a family of four could result in each family member electing HRA coverage separately. This effectively creates four separate HRA accounts and four available account balances when there used to be one. From a practical standpoint, when a family unit remains intact, most employers only extend the existing coverage (which could be elected by any QB). By contrast, in a situation where a single individual loses coverage (e.g., a spouse following a divorce, or a dependent child who ages out of the plan), the plan may need to allow the QB to make his or her own independent HRA COBRA election.

Amount of Coverage

The amount of coverage available when QBs elect COBRA coverage is also complex. When the QB is a single individual with no prior claims submitted for reimbursement from the HRA, determining the amount of coverage is straightforward. It's the amount originally available under the HRA. If a married individual with employee plus spouse coverage gets divorced and the HRA balance was $2,000 prior to the qualifying event, the former spouse should likely get access to the full $2,000. Although some COBRA administrators elect instead to divide the balance ($1,000). Determining the amount of coverage is even more complicated when the parties have submitted claims prior to the qualifying event. In this case, the plan needs to understand how it will offset specific claims against each QB's coverage. Where the amount of coverage is in question, the employer will likely want to engage its carrier/TPA and/or COBRA administrator for additional support.

New Employer Funding

Employers that offer HRAs often struggle with when to make contributions. Common options are to fund at the start of the plan year, quarterly, semi-annually, monthly, or per pay period. The best option may depend on the employer's tolerance for administrative tasks and the amount of employer funding at issue. Employers should understand that a QB who elects COBRA for the HRA gains both access to the existing funds at the time of the QE and any new employer contributions to the account. This is why QBs often elect the HRA only where they have large balances due to carryovers, or if their QE occurred on the eve of the next employer deposit.

Calculating the Applicable Premium

HRAs are self-funded, meaning the COBRA applicable premium can be determined using methods available to other self-funded plans, past-cost and actuarially. The past cost method is problematic for most HRAs. New HRAs cannot use the past-cost method (they have no past cost for a prior year) and must use the actuarial method. HRAs with several years of history also may not be able to use the past-cost method because the carryover feature may produce a significant difference in coverage from one year to the next (i.e., higher or lower coverage limits in a subsequent year) and the number of employees participating in the plan may have changed significantly. Thus, the actuarial method is the recommended approach. However, HRAs can use a "blended" approach so that the premium is the same for all qualified beneficiaries regardless of their HRA account balances.

Integration Rules and COBRA

ACA rules that require most HRA's to be integrated with employer sponsored major medical coverage (note exception for ICHRAs and EBHRAs) further complicate how employers offer COBRA. Under these rules an HRA cannot be offered as a single separate COBRA election. It must be offered bundled with major medical. Note that an option can also be presented that is only major medical without the HRA coverage (that excludes the added cost of the HRA). If the cost of the HRA is included in the COBRA rate for major medical, employers could/should offer one COBRA election including both major medical and the HRA. Employees that elect this bundled option would automatically get the HRA and

come into employer HRA funding on the same schedule as active employees. In cases where the HRA is inextricably tied to major medical (sometimes through a carrier's design), that may be the only way the carrier or TPA will administer the plan. Providing two election options (medical bundled with the HRA and medical offered on a standalone basis), may be preferable because many employees will not elect the option that includes the HRA.

Mergers and Acquisitions

Corporate transactions can take a variety of forms but are usually characterized as either a stock or an asset purchase. The form of the transaction can affect which entity (buyer or seller) may be required to offer COBRA to a mergers & acquisitions QB (M&A QB). A M&A QB is any QB already receiving COBRA coverage before the purchase/sale or a QB who experiences a QE in connection with the transaction. In an asset purchase, all employees are generally fired and the buyer may re-hire some or all of the seller's employees. As a result, this type of transaction can result in a significant number of M&A QBs to whom COBRA offers of coverage are required. In a stock purchase, employees are not fired and rehired (ownership of their employer is just transferred) so there are fewer M&A QBs. However, in either a stock or asset purchase the seller has the COBRA obligation for any M&A QBs if the seller maintains any plans, or any entity in seller's controlled group maintains any plans. If the seller does not maintain any plans then the buyer has the COBRA obligation unless it is an asset purchase and the buyer is not a successor employer (continuing operations). The parties can also agree to different COBRA responsibilities in the purchase agreement.

Medicare and COBRA

There are a number of situations where Medicare and COBRA interact to impact an individual's rights and obligations under both coverages.

COBRA First, Medicare Second

When any COBRA QB first becomes entitled to Medicare after electing COBRA coverage, his or her COBRA coverage can be terminated early. This rule does not impact the COBRA rights of other QBs who are not entitled to Medicare.

Note that where an individual has elected COBRA and then becomes eligible to enroll in Medicare, delaying enrollment in Medicare while only COBRA coverage is in place or until COBRA has been exhausted can result in a Medicare Part B premium penalty for failing to enroll when initially eligible. COBRA coverage is not viewed as employer sponsored coverage for this purpose.

Medicare First, COBRA Second

An employee and any dependent that is entitled to Medicare before electing COBRA still has the right to elect COBRA coverage. In other words, plan sponsors are required to offer COBRA to employees and dependents already covered by Medicare. COBRA must still be offered and may not be terminated early because of the prior Medicare entitlement.

Employee Medicare Entitlement is Rarely a Qualifying Event or Second Qualifying Event

An employee's entitlement to Medicare is one of COBRA's listed qualifying events. However, under MSP rules discussed above, active employee plans generally cannot be designed to terminate coverage as a result of Medicare entitlement. As a result, this will rarely be a COBRA qualifying event for active employees or their families. Note that it is permissible under the MSP rules for Medicare entitlement to cause a loss of coverage for covered retired employees (and their spouses and dependent children). In that situation, Medicare entitlement would constitute a first qualifying event

for the affected spouse and dependent children, permitting them to elect up to 36 months of COBRA under the plan.

Similarly, Medicare entitlement cannot be a second qualifying event giving rise to an extended COBRA maximum coverage period if the covered employee's Medicare entitlement would not have caused a loss of coverage for the spouse or dependent children under the plan. Under the MSP rules discussed above, group health plans are prohibited in most circumstances from making Medicare entitlement an event that causes a loss of coverage for active employees. Consequently, Medicare entitlement will rarely be a second qualifying event for purposes of the multiple qualifying event rule outside of certain retiree plans.

Special Medicare Extending Rule for Spouses and Dependent Children

When an employee's termination of employment or reduction of hours occurs within the 18-month period ***after*** the employee becomes entitled to Medicare, the employee's spouse and dependent children become entitled to COBRA coverage for a maximum period that ends 36 months after the covered employee becomes entitled to Medicare. The former employee remains entitled to 18 months after the termination of employment or reduction of hours.

State Mini-COBRAs

There are a number of states that have their own “mini” COBRA provisions. Most of these state laws (insurance code mandates) apply to small employers that are not subject to federal COBRA but some also extend the duration of federal COBRA. These laws are generally the responsibility of insurance carriers but employers often have a role to play under their carrier agreements. For details on these law see Alliant’s Federal COBRA and State Continuation Coverage Chart.

Conclusion

COBRA is a complex law with a lot of moving parts. It is also an element of health and welfare plan compliance that can give rise to significant liability, especially in the context of notice failures. It is important for employers to partner with reputable COBRA administrators so that steps in the process are not missed.

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