BENEFITS

COBRA Continuation Coverage: Who Pays?

By Jennifer Carsen, J.D., Senior Legal Editor Mar 6, 2018 Benefits

Most employers are aware that the Consolidated Omnibus Budget Reconciliation Act (COBRA) requires group health plans sponsored by covered employers to allow qualified beneficiaries to have "COBRA continuation coverage" in the event that they lose group health plan coverage for specified reasons.

COBRA applies only to employers who had 20 or more employees on more than 50% of typical business days during the prior calendar year. In some situations, insured employees have continuation rights under both federal and state law. When that happens, employees may choose the more favorable law.

Under both the federal law and almost all state laws, continuation requires the insured to pay the full premium (including the former employer's share), but the insured does get the advantage of cheaper group rates.

Employers are not required to pay for a qualified beneficiary's COBRA coverage—so who is? We'll take a look at this issue in depth, courtesy of our publication *Mandated Health Benefits—The COBRA Guide*.

Rules for Premiums

The statute expressly permits plan administrators to require payment of a premium for any period of COBRA coverage. However, the premium generally may not exceed 102% of the "applicable premium" for the period of coverage. Different rules apply if coverage is extended to 29 months due to an individual who was deemed disabled at any time during the first 60 days of COBRA coverage.

In such cases, the COBRA premium may be as much as 150% of the applicable premium for months 19 through 29 of COBRA coverage (or months 19 through 36, for disabled individuals who incur a multiple qualifying event during the disability extension period), as long as the disabled qualified beneficiary is in the group of qualified beneficiaries that continues coverage during the extended period.

At the payor's election, the premium may be paid in monthly installments. The applicable premium is the cost to the plan for a period of coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred.

Although COBRA does not require that employers pay for COBRA coverage, COBRA also does not require that a qualified beneficiary actually be the one to pay for coverage—that is, someone else can pay for the qualified beneficiary's coverage.

Divorce

Third-party payment often occurs in the divorce setting. For example, it is very common that, under a divorce decree, an employee may be required to maintain and pay for health coverage for his or her ex-spouse.

Subsequent Employers

Third-party payment is also common where a subsequent employer might pay for a qualified beneficiary's COBRA coverage. This might happen when the qualified beneficiary is undergoing some expensive medical treatment that the new employer's plan does not want to pay for.

By simply paying the COBRA premium, that employer can avoid having to pay the actual medical claim. Similarly, if employees go out on strike and lose their health coverage, a union strike fund might pay for their COBRA coverage.

Hospitals

Some hospitals or other benefit providers will also pay for COBRA coverage on behalf of patients. This can occur where the patient seeks treatment during a COBRA election period and the patient's only potential source of coverage is through COBRA. The benefit provider will sometimes agree to pay for a qualified beneficiary's COBRA coverage because, without that coverage, it might have to provide services with no realistic prospect of being paid.

After all, it is easier to collect payment from group health plans than from most patients. Thus, given the choice between paying a COBRA premium of several hundred dollars per month or rendering uncompensated care costing several thousand dollars per month, a benefit provider would likely pay the COBRA premiums.

Medicaid

Another instance where another entity will pay for COBRA coverage is when state Medicaid agencies pay for that coverage.

An Important Heads-Up for Qualified Beneficiaries

Any COBRA premium payment system should anticipate the possibility of payments from sources other than a qualified beneficiary. However, in all cases where someone other than the qualified beneficiary is making payment for COBRA coverage, plan administrators should make clear to all parties involved that the ultimate responsibility to verify that COBRA coverage is paid in a timely manner falls on qualified beneficiaries. If any third-party payer fails to pay on time, it is the qualified beneficiary who will lose the COBRA coverage.

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