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## COBRA training Part II

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CPEEHCC Training Conference  
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Services provided by Mercer Health & Benefits LLC

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### Agenda

**What is COBRA, and how does COBRA impact:**

- Type of coverage
- Open Enrollment
- Notice delivery
- Health care flexible spending accounts
- Medicare
- HIPAA guaranteed issue
- Domestic Partners
- Family Medical Leave Act (FMLA)
- Mergers and acquisitions
- Second Qualifying Events

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### What is COBRA?

**Consolidated Omnibus Budget Reconciliation Act**

- Requires employers maintaining group health plans to give employees and their dependents the opportunity to continue coverage at affordable group rates in cases where they would otherwise lose coverage because of certain events, known as Qualifying Events
- **Qualifying Event:** Must be one of the following AND result in a loss of coverage under the group health plan
  - Termination/reduction in hours
  - Employee's divorce/legal separation
  - Employee's death
  - Child loses dependent status
  - Employee's Medicare entitlement
  - Employer's bankruptcy – retirees and their dependents

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**COBRA and type of coverage**

- Employer not required to “unbundle” coverage
  - Example: medical, dental and vision are combined for active employees, need not permit Qualified Beneficiary to elect medical only
- Identical to coverage provided to active employees
  - Open enrollment – may elect different coverage or levels
  - HIPAA special enrollments – may enroll/add dependents if acquire new dependent or incur loss of other health coverage
- Relocate out of network – still required to offer COBRA, even if no practical value to employee
  - Example: California HMO – California Employee, terminates employment, and relocates to Florida

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**COBRA and open enrollment**

- **Open Enrollment Period:** Employee covered under a plan can choose to be covered under another group health plan or under another benefit package within the same plan, or to add or eliminate coverage of family members
- **General Rule:** Qualified Beneficiary to continue only the coverage in place immediately before the Qualifying Event
- **Exception:** The same open enrollment period rights for active employees must be made available to each Qualified Beneficiary receiving COBRA continuation coverage

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**COBRA and open enrollment**

- **Result:** Qualified Beneficiaries may add/drop coverage, and add/drop dependents, just as active employees could
- In addition, if the plan permits similarly situated active employees to add “new family members” at times other than open enrollment, then qualified beneficiaries must be permitted to do so

*Note:* dependents who are added at open enrollment would not be Qualified Beneficiaries because they were not covered on the day before the Qualifying Event

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**COBRA and open enrollment: Anticipation of Divorce**

- If a covered employee eliminates coverage for the spouse in anticipation of their divorce, then upon receiving notice of the divorce, a plan is required to make COBRA continuation coverage available to the spouse as of the date of the divorce
- Practice consideration (although not required by COBRA):
  - Advise spouses and dependents who have been dropped during open enrollment that they no longer have coverage
  - To protect their COBRA rights they must notify the plan administrator of any divorce

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**COBRA and notice delivery**

- Delivery
  - First class mailing of single notice to employee and spouse at same residence if single residence is latest information
  - Separate notice to spouse if later enrollment
  - Electronically (regulations); and
  - In-hand (e.g., at work/interoffice mail)
- Electronic and in-hand delivery to employee will NOT be valid delivery to spouse
- Notices are considered "furnished"
  - On the date mailed
  - On the date of an electronic transmission, or
  - On the date of actual receipt for
    - in-hand delivery, or
    - interoffice mail

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**COBRA and health care flexible spending accounts**

- **Uniform Coverage Rule:** "The maximum amount of reimbursement from a health FSA must be available at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements for the same period of coverage)."
- Right to continue may be limited to end of year in which employee terminates employment
- Right to continue is only required if participant has "underspent" his/her account

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**COBRA and health care flexible spending accounts: example**

- ABC Corporation offers major medical and health care FSA
- Employee elects to contribute \$1,200 (\$100 per month) to her health care FSA
- Employee terminates on 5/31 and has already received \$1,000 in reimbursements (but has only made \$500 in contributions)
- ABC Corporation is not required to offer FSA continuation coverage

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**COBRA and health care flexible spending accounts: example**

- Employee elects to contribute \$1,200 (\$100 per month) to her health care FSA
- Employee terminates on 5/31 but has only received \$300 in reimbursements (and has made \$500 in contributions)
- ABC Corporation is required to offer health care FSA for remainder of year:
- Employee's remaining benefits exceed cost of COBRA coverage
  - After deducting \$300 in reimbursements still eligible for additional \$900 in reimbursements
  - FSA can only charge employee \$714 for remainder of year
- If employee's reimbursement had been \$500 on 5/31: plan not required to offer COBRA at all

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**COBRA and Medicare**

- **Medicare Entitlement**
  - Age 65 ≠ Medicare Entitlement
  - Enrollment = Entitlement
- **Geissal v. Moore Medical Corp.** – the Supreme Court held that a Qualified Beneficiary who has other group health plan coverage at the time of a COBRA election remains entitled to elect COBRA and can essentially choose to have dual coverage
- Even though a covered employee may have other coverage before the qualifying event (e.g., termination of employment) that this does not disqualify them from being a qualified beneficiary when they lose their active employment coverage

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### COBRA and Medicare

- So, according to Geissal, it is a matter of what comes first: Medicare Entitlement or COBRA election
  - If a Qualified Beneficiary is entitled to Medicare prior to electing COBRA, he or she still gets COBRA coverage
    - The COBRA offer cannot be withheld because of Medicare entitlement
  - If a Qualified Beneficiary first becomes entitled to Medicare after electing COBRA, COBRA coverage can be terminated

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### COBRA and Medicare

What Happened First	What Happened Second	Must Offer COBRA/ Can Drop COBRA
Medicare	COBRA	Employer <b>must offer</b> COBRA
COBRA	Medicare	Employer <b>can drop</b> COBRA

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### COBRA and HIPAA guaranteed issue

- HIPAA requires all health insurance issuers offering coverage in the individual market to accept any "eligible individuals" who apply for coverage without imposing a Preexisting Condition Exclusion

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**COBRA and HIPAA guaranteed issue**

- An eligible individual must meet several criteria to be eligible for coverage on a guaranteed-issue basis:
  - The individual must have at least 18 months of creditable coverage without a 63-day break in coverage
  - The individual's most recent coverage must have been under a group health plan, a governmental plan, or a church plan
  - The individual cannot currently be eligible for Medicare, Medicaid, or a group health plan and is not covered under any other health insurance
  - The individual's most recent coverage cannot have been exhausted because of fraud or nonpayment of premium
  - **The individual has both elected and exhausted any continuation coverage available under COBRA or a similar state program**

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**COBRA and Domestic Partners**

- **Qualified Beneficiaries:** Covered employees, spouses, and dependent children covered under the plan on the day before a Qualifying Event
  - This does not include domestic partners
- A domestic partner will not be a Qualified Beneficiary and will have no independent COBRA election rights even if covered under the plan on the day before a Qualifying Event
- Even if state law recognizes a same-sex domestic partner as an employee's spouse, that status would not apply for COBRA purposes because of federal law (Defense of Marriage Act)

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**COBRA and Domestic Partners**

- **However,** a Qualified Beneficiary would be entitled to enroll his or her domestic partner for coverage if active employees are entitled to do so
  - Includes Open Enrollment
- **Result:** While domestic partners are not considered Qualified Beneficiaries and have no independent COBRA election rights, employees have the right to elect COBRA for themselves and for domestic partners

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**COBRA and the Family Medical Leave Act (FMLA)**

- FMLA Qualifying Event if:
  - Employee covered on day before first day of FMLA
  - Fails to return from FMLA leave, and
  - Employee would lose coverage in the absence of COBRA
- Qualifying Event occurs at the earliest of:
  - Employee informs employer that he/she will not be returning
  - End of FMLA leave period, if employee does not return

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**COBRA and mergers and acquisitions**

- Buyer and seller may allocate responsibility for
  - COBRA people existing prior to sale
  - COBRA people created by sale
- Regulatory default
  - **Stock sales:** Seller responsible, unless plan goes away in connection with sale
  - **Asset sales:** Seller responsible, unless plan goes away in connection with sale AND buyer is successor employer

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**COBRA and Second Qualifying Events**

- Only applies to:
  - Spouse or dependent
  - During COBRA 18 month period
- During 18 months, new Qualifying Event happens
  - Employee death, divorce/separation, loss of dependent status
  - Even if no coverage loss
- Spouse or dependent gets total 36 months of COBRA
  - measure 36 months from 1st Qualifying Event

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