

COBRA Tips®

A Publication of OnQue Technologies, Inc.

Questions and Answers from the COBRA Help Desk–Part IV

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Every month we answer numerous questions covering a wide range of COBRA topics. This COBRA Tip® presents some of the more interesting questions and answers posed by group health brokers and their clients:

- Carrier claims retiree's COBRA term is limited to 90 days.
- What are the rules for coordination of COBRA and Medicare Benefits?
- Are Employee Assistance Programs subject to COBRA?
- Mailing address omitted from medical child support order. What to do?
- Can carrier deny retroactive cancellation of COBRA coverage?

Carrier Claims Retiree's COBRA Term is Limited to 90 Days

Broker: One of our groups has someone who is terminating employment when he turns 65 and becomes entitled to Medicare. The carrier says the employee can only have COBRA for 90 days. I don't know where the 90 day period comes from. Can you explain this?

OnQue: I am as mystified by the purported 90-day coverage limit as you are; it does not exist. How long the employee may remain covered under COBRA depends on when he becomes entitled to Medicare. Here are the rules:

1. If the employee's Medicare entitlement occurs prior to the qualifying event, he is eligible to receive 18 months of coverage under COBRA, measured from the COBRA start date, while his covered dependents are eligible for a maximum of 36 months, measured from the Medicare entitlement date.
2. If entitlement occurs on the COBRA qualifying event date, both the employee and the covered dependents are eligible for 18 months of COBRA coverage.
3. If entitlement occurs after the qualifying event date, and on or before the COBRA election date, the employee and the covered dependents are eligible for 18 months of coverage.
4. If entitlement occurs after the election date, the employee's coverage may be terminated, provided the plan eligibility rules specify that coverage may be terminated early due to Medicare entitlement. In most cases, dependent coverage will not be extended. (To learn about cases in which Medicare entitlement extends a dependent's COBRA term, see [COBRA & Medicare.](#))

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What Are the Rules for Coordination of COBRA and Medicare Benefits?

Broker: A client has a 70 year old employee on Medicare Part A & B and COBRA continuation. Who is the primary payer?

OnQue: Generally, Medicare is the primary claim payer if:

- his entitlement is due to disability; or,
- his entitlement is due to age and he is not actively employed by the employer providing the health coverage.

If the Medicare entitlement is due to End-Stage Renal Disease (ESRD), Medicare will be the secondary payer during the first 30 months of his entitlement, unless he was already entitled to Medicare on the basis of age or disability at the time he became eligible for ESRD-based Medicare. In that case, Medicare is primary.

Be aware that the foregoing is an overview of the rules regarding the coordination of Medicare and COBRA benefits; the rules are very complex and other factors may affect the outcome.

Are Employee Assistance Programs Subject to COBRA?

Employer: I was told by a third party administrator that EAPs are not subject to COBRA. Is that true?

OnQue: An Employee Assistance Program that provides medical care is subject to COBRA. The challenge is in knowing what constitutes medical care and what does not.

If the EAP is not staffed by trained counselors or medical professionals and simply refers employees to others for advice and/or treatment, then the program does not provide medical care. Such EAPs are not subject to COBRA. However, if the EAP is staffed by trained personnel who provide any form of medical or advisory services, including counseling (drug, alcohol, depression, stress, etc.), it will likely meet the ERISA definition of an employee welfare benefit plan, which would make it subject to COBRA (DOL Advisory Opinion 88-04A, March 11, 1988).

Be aware that these are general guidelines. We recommend employers consult with legal counsel familiar with the EAP's details before determining whether it is subject to COBRA.

Mailing Address Omitted from Medical Child Support Order

Employer: I received two court orders (for the same employee) ordering us to insure his non-custodial children. The addresses of the dependents are not listed on the court order. What shall I enter into COBRA OnQue as the address for each of these dependents?

OnQue: If the court order is a Qualified Medical Child Support Order (QMCSO), it must include either the last known address of each recipient or the name and address of a State or local official. The following is taken from the U. S. Department of Labor "Compliance Guide for Qualified Medical Child Support Orders":

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Q1-6: What information must a medical child support order contain to be a “qualified” order?

A medical child support order must contain the following information in order to be qualified:

- The name and last known mailing address of the participant and each alternate recipient, except that the order may substitute the name and mailing address of a State or local official for the mailing address of any alternate recipient;
- A reasonable description of the type of health coverage to be provided to each alternate recipient (or the manner in which such coverage is to be determined); and
- The period to which the order applies.

If the order does not specify a mailing address for the dependents, (either the last known residence address or a substitute as described above), then I would contact the issuing court to obtain that information.

Carrier Denies Retroactive Cancellation of COBRA Coverage

Broker: I have a recent COBRA situation where the COBRA participant did not pay the premium within the 30 day grace period (she was already on COBRA and paying monthly). The carrier was contacted to terminate coverage retroactively to the paid-to date. A claim had been processed during the 30 day grace period. But the carrier terminated coverage only back to the date after the claim had been paid, not back to the participant's paid-to date; the employer was billed for the additional premium. Does the carrier have an obligation to cancel back to the beginning of the 30 day grace period, even when a claim has been paid?

OnQue: You are dealing with two issues in this case – COBRA law, which regulates the plan, and State law, which regulates the carrier. As far as COBRA is concerned, the plan may terminate coverage retroactively to the last day for which it was paid. Whether the carrier has the right to override the employer's directive depends on whether the plan administrator met the contract requirements for cancellation of coverage, assuming such requirements are legal under state law.

It is important to understand that COBRA does not meddle with carriers' administrative rules; the legality of such rules is the province of the state in which the contract is written. COBRA's only requirement with respect to the rules is that they meet specified minimum requirements, such as the 60-day election period and 30-day grace period rules, and that they be applied equitably among qualified beneficiaries and similarly situated active employees. Hence, if the contract rules support the carrier's action because it was not informed of the termination within the required timeframe, then COBRA will be silent on the matter, provided similarly situated active employees are subject to the same rules and the same level of enforcement.

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Your client must turn to the administrative rules to determine if the carrier was within its rights to deny retroactive cancellation of the qualified beneficiary's coverage. If any doubt remains regarding the legality of the rules or their application, your client should seek the advice of an attorney.

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