

Premium Underpayments Could Cost Employers New IRS regs place added burdens

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With the cost of health care benefits steadily rising while the economy slows, everyone is looking for a way to save a little money.

Well, the Internal Revenue Service may have just given the average strapped-for-cash COBRA continuee a belated holiday gift wrapped up in the 2001 Final COBRA Regulations released January 10, 2001.

Among other things, the regulations provide a much-needed definition for "insignificant premium underpayment." In essence, this new definition could potentially put your clients on the receiving end of a vicious cycle that gives COBRA continuees a legal way to underpay COBRA premiums by as much as \$50 a month, or \$600 a year.

Your clients - already struggling with soaring health costs and mounting administrative headaches - could be forced to subsidize these underpayments because the IRS defined insignificant as "...no greater than the lesser of \$50 or 10% of the required premium."

The IRS had noble intentions when it came up with this definition; it did not want good citizens who simply transposed figures on a check to be terminated from a plan. But everyone knows at least a handful of people who would take advantage of this situation. It's like a coupon from the IRS. That "handful" of people will quickly be added to the list of financial difficulties employers face today.

This ruling comes two years after the 1999 COBRA Regulations, which stated that "insignificant" underpayments might need to be accepted, without specifying the amount. So now a cunning COBRA beneficiary could shave 10% off his premium each month and force his former employer to absorb the equivalent of nearly two payments in 18 months. Ouch.

An employer's only way out is to send the beneficiary a notice, allowing a safe harbor period (the IRS recommends 30 days). Some choice: Either eat the loss or waste administrative time. For the sake of your clients, let's hope qualified beneficiaries don't band together and begin submitting \$49.99 underpayments en masse.

To make matters worse, carriers do not have to honor the additional grace period, leaving employers responsible for covering premium payments while hoping beneficiaries will remit their payments. Beneficiaries who fail to pay will be terminated from COBRA, at which point it could be too late for an employer to recoup that premium. Double ouch.

Many of the other provisions of the 2001 Final COBRA regulations place additional burdens on employers. Among them:

Alternative coverage for re-locating beneficiaries

All qualified beneficiaries who move outside of the region-specific area and ask for alternative coverage must be offered this coverage, if available, no later than the date of the relocation or the first day of the month following the request. This may force carriers - many of which offer alternative coverage only during open enrollment and with other conditions -- to rewrite the terms of their policies.

Premium increase considered loss of coverage

Despite opposition from the employer community following the release of the 1999 regulations, the IRS confirmed that gaining access to coverage less expensive than COBRA - for example, following reduction of hours or retirement whereby the individual's premium contribution increases -- does constitute a loss of coverage. According to the IRS, a person not offered COBRA when other more desirable coverage's are offered would be denied the 60-day election period and another 45 days to pay the first premium. "In some cases, these procedural protections might be more valuable," the IRS stated.

Employer withdrawals from multi-employer plans

A company that stops contributing to a multi-employer plan is responsible for providing COBRA to qualified beneficiaries if the employer establishes a new plan to cover active employees formerly covered by the multi-employer plan. That firm must also offer COBRA if coverage to employees formerly covered through the multi-employer plan comes from an existing plan. What's more, a multi-employer plan must offer COBRA until any waiting period under an employer's plan expires for a class of employees formerly covered under the multi-employer plan.

Clarifying its 1999 ruling, the IRS stated that if coverage for similarly situated non-COBRA plan participants is modified (e.g., switching plans), then coverage for COBRA beneficiaries must be modified accordingly.

Bankruptcies/asset sales

The IRS ruled, "A buying group does not fail to be a successor employer in connection with an asset sale merely because the sale takes place in connection with a bankruptcy proceeding." During asset sales, employees who terminate employment with the seller and no longer get health coverage from the seller do experience a qualifying event despite being employed by the buyer at the same job with the same health coverage.

Reinstating a Qualified Beneficiary

With health plans that allow retroactive reinstatements with proper reimbursements, an employer should take beneficiaries off the plan and wait for them to elect and pay the first premium. Otherwise, an employer could wait as long as 105 days (60 to elect and 45 to pay) to recoup the beneficiary's payment.

Terminating coverage in an anticipation of a qualifying event

The IRS clarified that in cases in which coverage is ended in anticipation of a qualifying event, COBRA must be offered at the time of the qualifying event, regardless of how many months may have passed since coverage was terminated.

Though the employer is not required to provide coverage between these two dates - which could pose pre-existing limitation problems in the future - the qualified beneficiary is entitled to the same coverage enjoyed before the qualifying event. Should the coverage be modified between these two dates for similarly situated non-COBRA beneficiaries, this new coverage must be offered to the qualified beneficiary.

As the IRS continues to enact more complex regulations and seek greater protections for beneficiaries, complying with COBRA will not get any easier for your clients. Consider recommending they outsource COBRA administration to a firm that can ensure 100% compliance and eliminate lots of administrative nightmares.

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Under Ms. Donay's direction, CCS' research department monitors changes and revisions to COBRA law and studies the impact of COBRA case law on program administration. CCS' clients benefit from the relationship Ms. Donay maintains with members of Congress, the Department of Labor and the IRS. She can be reached at (800) 300-3838 or donayjj@cobracs.com.

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