

Compliance Corner: COBRA Premium Payments and Optional Statements

CONEXIS

A group health plan is not required to contribute to the cost of continuation coverage under COBRA. In fact, plans may require payment up to 102% of the “applicable premium”, or 150% in the case of a disability extension¹, during the period of COBRA coverage.² The applicable premium is based on the cost to the plan for providing coverage under the plan. Employers and plan sponsors must accept COBRA premium payments on behalf of a qualified beneficiary, regardless of who makes the payment (e.g., hospital or employer). While plans are not required to send monthly bills or statements, if done properly, there are compliance advantages to sending monthly statements to COBRA continuants.

COBRA in General

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amends sections of the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code and the Public Health Service Act (PHSA). COBRA requires group health plans to offer “each qualified beneficiary who would otherwise lose coverage under the plan as a result of a qualifying event an opportunity to elect, within the election period, continuation coverage under the

plan.”³ COBRA law indicates seven qualifying events: termination, reduction in hours, divorce or legal separation, loss of dependent child status, employee’s entitlement to Medicare, death of the covered employee/retiree, employer’s bankruptcy (applies only to retirees).⁴ It is important to note that the mere occurrence of one of these events will not result in COBRA eligibility. An event is a qualifying event only “if, under the terms of the group health plan, the event causes the covered employee, or the spouse or a dependent child of the covered employee, to lose coverage under the plan.”⁵

Premium Payment Obligations

According to COBRA law, a plan may not require an initial premium payment “for any period of COBRA continuation coverage” earlier than 45 days after the qualified beneficiary elects COBRA coverage.⁶ Following the initial payment, premiums are typically due on the first day of each month, subject to a grace period. Under the grace period rule, plan sponsors must allow at least 30 days for a grace period. As neither the COBRA statute nor regulations directly address how to calculate the initial 45- or subsequent 30-day premium payment grace periods (e.g., how to address a grace period end date falling on a weekend or legal holiday), plan administrators should adopt a consistent practice when determining the plan’s policy for calculating the initial premium payment period and subsequent grace period. This policy should be clearly communicated and documented in

¹ ERISA § 602(3)(A); Code § 4980B(f)(2)(B)(i); PHSA § 2202(2)(A); Treas. Reg. § 54.4980B-7, Q/A-5
² ERISA § 602(3)(A); Code § 4980B(f)(2)(C)(i); PHSA § 2202(3)(A)

³ Treas. Reg. § 54.4980B-1, Q/A 1(a)

⁴ Treas. Reg. § 54.5980B-4, Q/A 1(b)

⁵ Treas. Reg. § 54.4980B-4, Q/A 1(c)

⁶ Treas. Reg. § 54.4980B-8, Q/A-5(b)

CONTINUED ON PAGE 2

plan documents and COBRA notices.

Once a plan administrator has notified a qualified beneficiary of COBRA premium payment costs and due dates, the qualified beneficiary is responsible for ensuring timely payment.⁷ It is important to note that COBRA law does not require plans to provide monthly statements or notices for overdue or insufficient payments, although some may choose to do so.⁸ The Department of Labor (DOL) COBRA regulations also provide that plan administrators must send a notice of termination to any qualified beneficiary who experiences early termination of coverage due to nonpayment, or any other reason that results in premature termination of coverage (i.e. any reason other exhaustion of eligibility).⁹

Recommended Statements for COBRA Continuants

Plan administrators are only required to send an election notice that informs the qualified beneficiary of the plan's premium deadlines. Any additional notification regarding premiums via billing statements, late payment reminder letters, coupon books, or other means, is voluntary. However, monthly premium reminders are advisable and may serve as a valuable compliance tool.

Some plans may send coupon books containing a coupon for each month of the maximum coverage period while others send monthly premium statements. Either way, both are quite useful:

- They are a reminder to the qualified beneficiary of the due date and the date that the 30-day grace period expires; and
- They can include questions regarding whether the qualified beneficiary has become entitled to other group health plan coverage or Medicare, which can

assist the plan administrator in ensuring receipt of notification of entitlement to other coverage.

Additionally, plan administrators may send a late premium payment reminder to a qualified beneficiary whose premium has not been paid by the due date. A late premium payment letter would advise the qualified beneficiary that coverage will be canceled if the payment is not received by the end of the grace period.

Furthermore, plan administrators choosing to send monthly statements or letters should clearly communicate that said statement is not a bill, but merely a courtesy reminder. It is best for monthly statements to include verbiage reminding the qualified beneficiary that they are responsible for payment even if a monthly statement is not received.

Consequences

Failure to comply with COBRA regulations and guidelines can lead to significant consequences. It is important for plan sponsors to realize that COBRA penalties begin on the first day of noncompliance and continue until resolution. Plan sponsors must clearly communicate and document all plan policies when it comes to premium payment deadlines, grace periods and any premium changes. Otherwise plans may face unnecessary litigation which can lead to considerable statutory and financial penalties.

⁷Manning v. W.I. McKendree Co., 1991 U.S. Dist. LEXIS 12894

⁸Pension and Health Care Coverage...Questions and Answers for Dislocated Workers available at http://www.dol.gov/ebsa/publications/dislocated_workers_brochure.html

⁹DOL Reg. § 606-4(d)(1)

CONEXIS Embraces E-HERO™ Culture

Melissa Suggs

CONEXIS, today announced the launch of E-HERO™, a program that focuses on helping the environment by making simple changes and leveraging evolving technologies to increase efficiencies while decreasing the company's impact on the environment. Every CONEXIS employee has been challenged to be an E-HERO and they are encouraged to submit their ideas for workplace and environmental improvements to the CONEXIS Cares Committee.

"E-HERO simply means employing efficient practices that benefit the clients and participants we service, while simultaneously decreasing negative environmental effects," said Michael Close, President of CONEXIS. "By implementing various changes and increasing efficiencies, CONEXIS has established eco-friendly practices while streamlining our service delivery."

CONEXIS E-HERO initiatives include:

- Electronic documents – wherever possible, paper notices and statements were replaced with electronic notices delivered via e-mail
- Increasing direct deposits – CONEXIS implemented various campaigns to increase the number of payments issued by direct deposit, saving paper and expediting claims payments to participants
- Duplex printing – by transitioning to duplex printing, CONEXIS decreased its paper usage and waste
- Eliminating foam cups – CONEXIS provided an

E-HERO mug and tumbler to each employee to eliminate the use of plastic foam cups throughout its offices

CONEXIS plans to implement many more E-HERO strategies throughout the year.

"As concern for environmental issues continues to rise, being an E-HERO is not only critical to the welfare of our environment, it is also personally rewarding," Close said. "We will continue to encourage our employees to strive to increase efficiencies and promote eco-friendly practices in our organization."

Benefits Council Predicts Quick House Passage on Fee Disclosures

BestWire Services

Raymond J Lehmann

Legislation seeking enhanced disclosures from employee retirement plans and plan service providers stands poised to move quickly through the U.S. House, possibly passing as early as Memorial Day, despite concerns and reservations from the employer and provider community, a key Capitol Hill observer told attendees of MetLife Inc.'s 2008 employee benefits symposium.

Both the House Ways and Means Committee and House Education and Labor Committee are set to move later this month to take up and pass the 401(k) Fair Disclosure for Retirement Security Act, sponsored by Labor Committee Chairman George Miller, D-Calif., according to Jamey Delaplane, partner in the Washington-based firm of Davis & Harman and special counsel to the American Benefits Council. Delaplane said floor action is expected by "the late spring or early summer."

The bill, H.R.3185, would require service providers to disclose any potential conflicts of interest and that plan administrators make annual disclosures of fees charged to plan participants. The measure also would establish an Advisory Council on Improving Employer-Employee Retirement Practices within the U.S. Labor Department.

U.S. participation in 401(k) plans rose from fewer than 8 million participants in the mid-1980s to about 47 million in 2005, with assets in such plans increasing from less than \$100 billion to more than \$2 trillion over that period, according to the U.S. Government Accountability Office. Despite the size of the market, the federal Employee Retirement Income Security Act does not currently require plans to disclose fees to plan participants. A July 2007 study by the AARP found only 17% of 401(k) enrollees were aware of fees paid to 401(k) service providers, while 65% of respondents said they thought they paid no fees.

The bill focuses on participant fee disclosure "on kind of a pretty high volume of detail, line-by-line technical fee information given to participants," Delaplaine said. "That's come in for some criticism, but the hope is that as the bill evolves, that would be streamlined, information would be made more simple, and more would be made available upon request."

Delaplaine said interests in the employee benefits community expect to see revisions to the bill as it moves through the committee process, but one feature likely to stay intact is a provision requiring 401(k) plans include at least one lower-cost, balanced index fund in the mix of investments available to participants.

Despite the strong support in the House, Delaplaine also noted the measure has not received nearly as

much attention in the Senate. The topic has been the subject of hearings by the Senate Special Committee on Aging, but has received only limited attention before the Senate Finance Committee and Senate Health Education Labor and Pensions Committee, which have primary jurisdiction over the issue.

"There are no current legislative plans to take the fee disclosure bill up in the U.S. Senate. That could change ... depending on how the House debate unfolds," Delaplaine said. "At the moment ... you would say that the regulatory work [the Department of Labor is] doing is much more likely to give us the kinds of changes in the law with respect to fee disclosure than congressional legislation will."

The DOL, through the federal Employee Benefits Security Administration, has been engaged in an ongoing project to require additional disclosure of fee and expense information, issuing final regulations governing enhanced Form 5500 disclosures in November 2007. The department now is looking to enhance participant-level disclosures, including plan administrative expenses, investment return information and fee disclosures, according to Robert Doyle, the Labor Department's director of regulations and interpretations.

"The fundamental challenge is trying to ascertain what information participants need to make informed decisions about their individual accounts and investment options," Doyle told participants at the MetLife symposium. "We make the case that the regulatory process is really the best approach to do this."

Recent public hearings on proposed rules for plan services and fee disclosure drew comments from, among others, the American Council of Life Insurers and the Council of Insurance Agents & Brokers. ACLI

recommended the department first focus on individual retirement accounts before applying a broad set of rules to defined benefit pension plans and other health and welfare plans, and argued that service providers should be able to make disclosure notifications through notices to plan fiduciaries rather than changes in underlying plan contracts.

Copyright © 2008 A.M. Best Company, Inc.

CONEXIS Comment does not render legal, accounting or other professional advice. If you need legal advice, you must seek the opinion of a qualified attorney. No part of this publication may be reprinted without the written permission of CONEXIS.

Comment Newsletter



CONEXIS Comment is a monthly publication of CONEXIS. It is also available in digital form by request at comment@conexis.com or by subscribing at www.conexis.com.

About CONEXIS

For more than 20 years, CONEXIS has delivered a wide range of employee benefit administration solutions to employers, third party administrators (TPAs), business outsourcing partners and health plans across the nation. Specializing in the complex areas of administration and compliance, its expertise includes COBRA and HIPAA Administrative Services; Direct Bill Services for Retirees, Leave of Absence (LOA) and Family Medical Leave Act (FMLA); and Reimbursement Account Administration, including Section 125 Flexible Spending Accounts (FSA), Section 132 Transportation Plans, Section 105 Health Reimbursement Arrangements (HRA), and Health Savings Accounts (HSA). CONEXIS was the nation's first outsourcing provider to offer benefits administration on a single Web-based, fully integrated system and is the only benefits administrator to offer performance standards and guarantees to all clients, regardless of size. CONEXIS, headquartered in Dallas, Texas, with a customer service center in Orange, California, is a Word and Brown company. For more information, visit the company's Web site at www.conexis.com.

