

COBRA Bootcamp Part II Q&A – the following questions were asked during the two webinar sessions in COBRA Bootcamp Part II in July.

NOTE:

- Slides are found on the Employee Benefits Corporation website www.ebcflex.com under Education/webinars. Scroll down to the desired webinar. Click on Handouts to the right.
- For live webinars, the audio is not available through your computer and you must dial into the phone number provided by GotoWebinar.
- The replay webinars are played on demand for a period of time following the webinar and are played through your computer speakers. These COBRA Bootcamp series webinars will only be covering Federal COBRA and will not be discussing state continuation on any level.
- We do not have model COBRA notices available online; however, you can find model notices on the Department of Labor's (DOL) website.

Q. When electing COBRA you mentioned "signature date" - so when factoring in Medicare it's based on signed date of COBRA not effective date of COBRA?

A. If you are enrolled in Medicare prior to a reduction in hours, the employee will be offered 18 months of COBRA and the spouse or any dependents are offered 36 months of COBRA from the date the employee enrolled in Medicare. It is important for QBs to understand that in this case COBRA will pay secondary to Medicare.

Another factoid that an employer might share with an employee reaching a Medicare eligible age is that if they accept a Social Security payment when reaching that point, and continue to work, they will automatically be signed up for Part A. That means they are entitled. If they are an active employee, and because Medicare Secondary Payer Rule says group health is required to pay primary, Medicare will pay secondary.

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If the employee has only selected Part A, and not signed up for Part B, and elects COBRA, COBRA will still pay secondary and will assume that Part B has been enrolled in. The employee needs to be aware that they need to also sign up for Part B.

Q, What if we have an employee that elected family coverage and is getting divorced. If children stay on the employee's health insurance plan, and the soon to be ex wife elects COBRA for herself, what do we charge the ex-wife if she wants to continue coverage?

A. If the question is "What do we charge for health insurance coverage?"; the answer is the COBRA cost for a single plan + 2%. If the question is "What do we charge for the excepted Health Care Flexible Spending Account (HCFSA)?"; the COBRA premium would represent the annual election minus the deposits of the excepted HCFSA, plus any employer contributions, x 2%, divided by the remaining months in the year. The COBRA premium payment extends the HCFSA coverage period month by month, which extends the amount of time the COBRA QB can incur expenses towards any remaining balance in the HCFSA.

Q. If we offer \$500 FSA for an employee through COBRA, are you saying if they have 3 dependents on their insurance plan the dependents have the right to take \$500 dollars each separately? What if the employer doesn't contribute to the FSA?

A. Each Qualified Beneficiary (QB) has the independent right to elect the full HCFSA amount, including the employer contribution. Keep in mind they must pay the full premium for this account. If the employer does not contribute to the HCFSA, the COBRA premium is based on the annual election minus the deposits made to date which has been contributed to only by the employee, in order to access any remaining balance in the HCFSA

Q. What happens when we have open enrollment and our plans change or a plan gets phased out and someone is currently on COBRA? Do they have the option of switching plans? How do we determine which plan they are on?

A. COBRA QBs receive the same rights as active employees as pertains to open enrollment. If the employer decides to change carriers, or changes plan design options, or networks, offers a wellness program subject to ERISA, and all active employees have open enrollment rights, the QBs get all those same offerings. The notice or packet of benefit options for the new

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benefits must be sent out, just as with active employees, to all QBs in a timely fashion to allow those QBs to enroll in their desired selection. The election process is exactly the same as for active employees, so it likely is not necessary to know which plan they are on currently.

Q. When you say HCFSAs are COBRA, this would only be if there is an employer contribution, correct? We don't contribute to our HCFSAs.

A. No. The HCFSAs are accounts contributed to by the employee, or sometimes the employee and the employer. The HCFSAs (if an excepted benefit) are always, if not overspent, subject to COBRA for the remainder of the plan year. If the HCFSAs are non-excepted HCFSAs (because the employer contributions exceed \$500 and are not matching contributions), you must offer COBRA regardless if your account is overspent or underspent.

Q. Do we have to charge the COBRA Premium? Can we just do 100% excluding the extra 2%/50%?

A. The employer is not obligated to charging the additional 2% or 50%. That being said, if the employer has contracted with a third party administrator (TPA), the TPA may retain the admin fees for services performed. Employee Benefits Corporation retains the 2% admin fee as part of our Service Agreement and fee schedule.

Q. The insurance company will only go back and credit premiums for a certain period of time - if we don't cancel the insurance right away, we may lose out on one or two months of premiums paid on behalf of the employee who ends up not electing/paying?

A. Regulation allows the employer to cancel the COBRA coverage at the end of the 30 day grace period. The employer may not cancel the coverage during the 30 day grace period. You are correct in that insurance companies will generally not retroactively cancel coverage beyond 2 months. Those 2 months give precisely the right amount of time to honor the grace period, and send out the termination notice for non payment. Regular reconciliation of insurance invoices will help employers avoid any expenses associated with late notification of terminations.

Q. Does running out vacation time extend the deadline for COBRA eligibility?

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A. That depends on whether or not COBRA is postponed. It does not extend the maximum COBRA coverage period, but may delay the start of the coverage over 18 months.

It also depends on whether or not the employee loses eligibility for the active plan. If the employee remains on the active plan after they terminate employment, the employer continues to pay their portion of the premium, and the employee their normal contribution; there is a postponement of COBRA because there is a delay in the loss of coverage. Sometimes, an employer offers to pay a portion of coverage under a severance arrangement as a condition of electing COBRA. In this case the coverage is not postponed and is running concurrent. If the employee will be paying 100% of the premium, this is considered loss of coverage and the employer needs to make it a formal offer of COBRA coverage.

It is advised that the employer starts COBRA as per usual (date of term or date of loss of coverage), have the employee elect COBRA and pay out the PTO as additional income. Leaving an employee on active coverage when they are not eligible could leave the employer and employee liable for claims the insurance carrier may decline to cover.

Tune in to COBRA Bootcamp Session IV for a more in depth discussion of these topics.

Q. My employer says by law they are not supposed to contact prior employees once they are terminated? So what is the correct lawful way for employers to contact terminated employees?

A. I am not familiar with that law, but for the purposes of COBRA, mailing employees' information about their COBRA rights, elections, payments, open enrollment and a variety of other notices IS the COBRA law and therefore must be abided by.

Q. What happens when an employee has drained their entire HCFSA account, then quits prior to making all contributions?

A. This is called the Uniform Coverage Rule: it stipulates that at any point from the first day of the new plan year the employee may use every dime in their annual HCFSA election prior to making all of their contributions. If the employee terminates employment the employer may NOT ask for either repayment of the benefit or recoup the contributions missed. On the flip side of that coin is Forfeiture or "Use it or Lose It". This states that if the employee leaves

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any amount in their account at the end of the year, (and providing doesn't also have rollover or use of a grace period or run out), the employee forfeits that amount to the employer. In most plans, there is a balance between the two rules, one benefiting employers and the other benefiting employees.

If the employee had an excepted HCFSAs, the account is overspent and there is no offer of COBRA. If the employee had a non-excepted HCFSAs and the account is overspent, you are required to offer COBRA for 18, 29 or 36 months depending upon the circumstances.

Q. When someone is employed with us and takes insurance, we cover 50% of their premiums. When they go on COBRA, obviously we can charge them the full 100% of their premiums - correct? We would no longer pay the 50% of their premiums.

A. Correct.

Q. If an employer adds a benefit that wasn't available when the COBRA participant wasn't employed, does the COBRA participant have to be offered that benefit? Or are we required to only offer the benefits that were offered at the time of employment?

A. At the time of the qualifying event, the participant gets an offer for ONLY the benefits they were enrolled in the day prior to termination. However, during open enrollment the employee may sign up for any benefits they did not elect when they were employed, if active employees have this same option at open enrollment time. This includes adding dental, switching to the HMO from the PPO, etc.

Q. Verify - we cannot cancel insurance such as dental until after 60 days even though if they elect COBRA it will back date to first day insurance ended?

A. For newly terminated employees, we recommend that the employer term the coverage at termination and then reinstate the coverage if they elect COBRA. For current QBs who have not paid timely, the coverage must remain in force until the end of the grace period.

Q. Our HRA is employer-funded. Do I still charge a premium to COBRA participants or does it remain employer-funded under COBRA?

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A. All Health Reimbursement Arrangements (HRAs) are funded exclusively by the employer. A COBRA premium is charged for a QB to continue to participate after they terminate. The premium, essentially, pays the employer to extend the coverage period. The IRS has informally remarked that you cannot charge a \$1 to get a \$1 in benefits, so the employer must actuarially determine the premium by using the past cost method or an estimate of expense. An employer may also opt to offer an alternative to COBRA, which permits the employee to spend down any remaining balance in lieu of electing COBRA.

Q. If insurance is extended through severance - does the COBRA period begin AFTER the extension? Say insurance is extended for six months then COBRA would start after that and run 18 months - for an 18 month event? When does the COBRA election form need to be signed? 60 days after qualifying event or 60 days after the six month extension?

A. *Tune in for COBRA Boot Camp Series Part IV* as it will address this issue in more detail. For this question however, the answer is “it depends” on the employer policy, agreement with the insurance carrier, and severance agreement with the employee. If what you are saying is that the employee remains on the active plan until the end of the severance, COBRA coverage is postponed and would start at the date of loss of coverage. The COBRA election deadline is 60 days after the date that plan coverage ends or, if later, 60 days after the date of the COBRA election notice. If the COBRA election notice goes out when the employee terminates employment, the employee has 60 days from the loss of coverage date to elect or waive. Many severance arrangements however, offer an employer subsidized premium only if the employee elects COBRA first, which means the severance and the COBRA run concurrently.

Q. We recommend that the employer term employee coverage and then reinstate if they elect COBRA because most carriers will not refund premiums more than 60 days retroactive.

A. Employee Benefits Corporation concurs with that. For newly terminated employees, we also recommend that the employer term the coverage at termination and then reinstate the coverage if they elect COBRA. For current QBs who have not paid timely, the coverage must remain in force until the end of the grace period.

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Q. Can children elect COBRA if the EE does not enroll? If the employee had EE child coverage when active, then is terminated can they elect COBRA for just the child?

A. Yes, if the child(ren) was covered by the health insurance the day before the employee terminated, the children have separate COBRA rights and may elect coverage, or have coverage elected just for them (the child/ren).

Q. For HRA COBRA offerings, do you list insurance + HRA and insurance only rates separately on the Qualifying Event Notice?

A. When the HRA is integrated with the health insurance, the QB may elect just the medical or the medical including the HRA. They may not elect just the HRA in this case. There should, at minimum be 2 premiums offered for each coverage tier.

Q. What happens if coverage is not extended until the end of the month for a terminated employee? I don't believe you can pro-rate COBRA coverage.

A. Not all coverage ends at the end of the month, so therefore when this is the case the premium for that month is whatever percentage of that month is still yet to occur.

Example: If a month has 30 days, and the employee terminates on the 10th, the premium charged would be an estimated 2/3 of the monthly premium.

Q. Can you please explain banking COBRA premiums? Does this mean employees are eligible to use the cafeteria dollars to pay premium?

A. If an employee knows they are going to terminate, the regulation allows that employee to deduct pretax premiums to be used to pre-pay COBRA premiums. Occasionally, a participant may want to accelerate their deductions and prepay the entire year's HCFSAs salary reductions in anticipation of retirement or termination. If the employer agrees, then additional deductions may be taken from the active participant's paychecks to prepay HCFSAs COBRA coverage. The employer may add on the typical 2% administrative fee to these COBRA premiums and have that deducted pre-tax as well. The termination date for the HCFSAs is reported as the end of the month for which COBRA applies if they have pre-paid COBRA premiums prior to the last day worked.

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A qualified beneficiary who elects COBRA health insurance generally will pay for COBRA with after-tax dollars by remitting payment to the employer. However, some employers design their cafeteria plans to permit employees who elect COBRA to voluntarily pay for prospective coverage with pre-tax dollars out of their final paychecks, but only for coverage through the end of the current year. In addition, severance payments received by former employees can be salary-reduced to pay for COBRA premiums, so long as the cafeteria plan document permits the practice.

Q. Does a dependent aging off the health plan get the same election coverage as the plan they are under when they age off?

A. Yes. You do offer COBRA to the dependent that ages off coverage. For adult children, this will cause a loss of insurance coverage in the month they turn 26. Keep in mind that the adult child is permitted to stay covered under the HCFSA or HRA until the end of the calendar year that he/she/turns 26.

When a Health Care FSA is an excepted benefit, the limited COBRA obligation applies and the maximum amount of time you are permitted to be on the plan is through the end of the plan year in which you were a participant. So in the case that the adult child stays on the parent's plan until the end of that plan year, there would not be any COBRA to offer the adult child aging off the plan assuming the plan is a calendar year.

When a Health Care FSA is non excepted, you then need to offer COBRA even if the account is overspent, and the length of COBRA term in this case would be for 18 months. This allows the adult child to make another election for the new plan year. If the adult child took the HCFSA as a COBRA benefit, they would then get the full HCFSA amount (and be charged the full premium + 2%).

For the HRA, the length of COBRA term in this case would be for 18 months for a child losing dependent status. This allows the adult child to continue to participate in the new plan year. HRA premiums are based upon an actuarially or past cost method plus 2%. The HRA is offered as a bundled benefit with the major medical plan after they lose HRA coverage under the parents plan.

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Q. If a QB terminates after being Medicare eligible, can the COBRA offer NOT be sent?

A. No. All individuals either eligible or entitled to Medicare must receive a COBRA offer when they retire.

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