

Must Our Plan Offer COBRA Coverage to Spouses and Dependents Whose Coverage Was Dropped at Open Enrollment?

EBIA Weekly (January 4, 2024)

QUESTION: When employees drop coverage for dependents or spouses under our company's group health plan during open enrollment, our practice has been to provide the dropped individuals with COBRA election materials. However, our new COBRA TPA says this is not necessary. Must our plan offer COBRA coverage to these individuals?

ANSWER: In most cases, you do not have to provide COBRA election notices to spouses and dependents whose coverage is dropped at open enrollment, but complexities can arise in some situations. COBRA requires a plan to offer continuation coverage to qualified beneficiaries only if coverage is lost due to certain triggering events such as termination or reduction of hours of the covered employee's employment, divorce or legal separation, death of the covered employee, or a dependent child's ceasing to be a dependent under the plan. (When a triggering event results in a loss of coverage, it is called a COBRA "qualifying event.") But an employee might drop a spouse or dependent from coverage for other reasons—for example, because the spouse or dependent has enrolled in another employer's health plan. Only COBRA qualifying events give rise to an obligation to provide a COBRA election notice.

Caution is needed because sometimes, dependents or spouses are dropped from coverage during open enrollment due to a COBRA triggering event. For example, dependents may be dropped because they have ceased to be dependents under the plan's terms, or a spouse may be dropped because of a divorce or legal separation. If these COBRA triggering events result in a loss of coverage, they may also be COBRA qualifying events that give rise to an obligation to offer COBRA coverage. A plan is generally not required to provide a COBRA election notice unless the plan administrator is notified of a divorce (or legal separation) or a child's ceasing to be a dependent within 60 days after the event occurs—provided that the notice requirement is communicated through the plan's SPD and COBRA initial notice. Nevertheless, a plan administrator that becomes aware that one of these qualifying events (such as a divorce) has occurred may wish to act on that information and provide a COBRA election notice immediately, even without formal notice. Sending the election notice will start the 60-day COBRA election period running at the earliest possible time. And a court could hold a plan administrator responsible for providing an election notice to a qualified beneficiary if the plan administrator knew or should have known that a qualifying event occurred, regardless of whether the administrator received the required notice.

An employee might also drop a spouse or dependent from coverage during open enrollment because he or she "anticipates" a triggering event such as a divorce. When coverage has been eliminated or reduced in anticipation of a divorce, COBRA must be offered to the spouse beginning with the date of the actual divorce, even though the spouse was not covered immediately before the divorce and did not lose coverage because of the divorce. Because the anticipation rule can create administrative and legal complexities, plan administrators should consult their legal counsel and insurers when applying it to particular situations. Although not required by COBRA, some

plan administrators send a letter to spouses or dependents who have been dropped during open enrollment, advising them that they no longer have coverage and reminding them that, to protect their COBRA rights, they must notify the plan administrator if they lost coverage due to divorce, legal separation, or a dependent child's loss of eligibility, as applicable.

For more information, see EBIA's COBRA manual at Sections VII.I ("Not All Losses of Health Coverage are Caused by Triggering Events"), VII.J ("Triggering Event Must Cause Loss of Coverage"), VII.N ("Special Issues: Loss of Coverage in Anticipation of Qualifying Event"), and XVII ("Notices From Covered Employees and Qualified Beneficiaries").

Contributing Editors: EBIA Staff.