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Section 4980B.--Continuation Coverage Requirements of Group Health Plans

January 22, 1996

Two COBRA premium issues. Guidance is given on two premium issues that arise under the continuation coverage requirements for group health plans in section 4980B of the Code.

ISSUES

(1) Under the facts of situation 1 below, may the plan require that two qualified beneficiaries receiving COBRA continuation coverage with respect to the same qualifying event jointly pay 102 percent of the family rate?

(2)(a) Under the facts of situation 2(a) below, may the plan require that a sole qualified beneficiary receiving COBRA continuation coverage pay 102 percent of the family rate?

(b) Under the facts of situation 2(b) below, may the plan require that a sole qualified beneficiary receiving COBRA continuation coverage pay 102 percent of the individual rate?

FACTS

Situation 1. Plan P is a group health plan subject to the COBRA continuation coverage requirements of § 4980B of the Internal Revenue Code. P covers eligible employees and their eligible spouses and dependent children. The benefits under P are provided solely through a contract with insurance company I.

I charges P one of two premium rates for each eligible employee covered under P: a rate of \$150 per month where only the employee is covered (the "individual rate"), and a rate of \$400 per month where a spouse or one or more dependent children are covered together with the employee (the "family rate"). There are no experience rebates or dividends under P's contract with I.

Employee E has a spouse S. A qualifying event occurs that results in a loss of coverage under P for E and S. Neither E nor S is disabled at the time of the qualifying event. COBRA continuation coverage is elected for E and S. I charges P the family rate for covering E and S, and P requires that E and S jointly pay 102 percent of the family rate.

Situation 2. (a) The facts are the same as in situation 1, except that, instead of COBRA continuation coverage being elected for both E and S, it is elected only for S. I charges P the family rate for S's coverage, and P requires that S pay 102 percent of the family rate.

(b) The facts are the same as in paragraph (a) of this situation 2 except that P requires that S pay 102 percent of the individual rate.

LAW

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272, established continuation coverage requirements for certain group health plans (the "COBRA continuation coverage requirements"). These requirements, as amended by subsequent legislation, are now codified in § 4980B of the Code. Section 4980B imposes an excise tax if a plan subject to the COBRA continuation coverage requirements fails to comply with those requirements.

Under § 4980B(f)(1) of the Code, "qualified beneficiaries" (generally defined in § 4980B(g)(1) as employees, their spouses, and their dependent children) are entitled to elect COBRA continuation coverage upon the occurrence of "qualifying events." A qualifying event is an event such as a termination of employment, death, divorce, or other event described in § 4980B(f)(3), if the event results in a loss of coverage under the plan.

Section 4980B(f)(2)(C) permits a plan to require the payment of a premium for any period of COBRA continuation coverage, but limits that premium to 102 percent of the applicable premium for that period. (This limit is increased to 150 percent of the applicable premium in cases where a qualified beneficiary has obtained an extension of the maximum required period of COBRA continuation coverage under § 4980B(f)(2)(B) because of disability at the time of the qualifying event.)

The applicable premium is defined in § 4980B(f)(4)(A) of the Code, with respect to any period of continuation coverage of qualified beneficiaries, as the cost to the plan for that period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether the cost is paid by the employer or the employee). Under § 4980B(f)(4)(C), the applicable premium is required to be determined for a period of 12 months, and the determination must be made before the beginning of that period.

Under § 4980B(f)(5)(B) of the Code, if there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate election among the types of coverage. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-859 (1986) clarifies that each qualified beneficiary is entitled to a separate election of continuation coverage, and that a spouse or dependent child can elect continuation coverage even when the employee does not.

In accordance with H.R. Conf. Rep. No. 453, 99th Cong., 1st Sess. 563 (1985), until final regulations are published, the excise tax imposed by § 4980B will not apply if employers and group health plans operate in good faith compliance with a reasonable interpretation of the statutory requirements.

ANALYSIS

(1) P is charged two rates for plan beneficiaries with respect to whom a qualifying event has not occurred, an individual rate for coverage of the employee only, and a family rate for coverage of the employee and a spouse or one or more dependents. In situation 1, both E and S are receiving COBRA continuation coverage. If there had not been a qualifying event, E and S would have belonged to the category of beneficiaries consisting of an employee and one or more family members (a spouse or one or more dependent children), all of whom are covered as a family. Because P charges P the family rate for an employee in this category, it is a reasonable interpretation of the statutory requirements for P to determine that the family rate is the applicable premium for E and S. Consequently, if P operates in good faith compliance with this interpretation, P will not fail to meet the COBRA continuation coverage requirements by requiring that E and S jointly pay 102 percent of the family rate.

The conclusion in situation 1 is the same for any two or more qualified beneficiaries with respect to the same qualifying event. Thus, if E and S had a dependent child C who also lost coverage under P as a result of the qualifying event, it would be a reasonable interpretation of the statutory requirements for P to require the joint payment of up to 102 percent of the family rate if COBRA continuation coverage were elected for E and C. The conclusion in situation 1 would also be the same if COBRA continuation coverage were elected for S and C because these two qualified beneficiaries are members of the same family, and they are similarly situated to the category of two or more beneficiaries from the same family.

(2)(a) In situation 2(a), only spouse S has COBRA continuation coverage. As an individual, the sole qualified beneficiary S is not similarly situated to the family category of beneficiaries, which includes only groups of two or more individuals. Consequently, it is not a reasonable interpretation of the statutory requirements for P to determine that the applicable premium for S is the family rate, and P fails to meet the COBRA continuation coverage requirements in situation 2(a) by requiring that S pay 102 percent of the family rate.

The conclusion in situation 2(a) is the same in any case where COBRA continuation coverage is elected only for one qualified beneficiary in a family. Thus, if E and S had a dependent child C who also lost coverage under P as a result of the qualifying event, P would also fail to meet the COBRA continuation coverage requirements by requiring the payment of 102 percent of the family rate if COBRA continuation coverage were elected only for C (or only for E).

(2)(b) In situation 2(b), P requires that S pay 102 percent of the individual rate. As noted above, under the facts of situation 2(b), the sole qualified beneficiary S is not similarly situated to the family category of beneficiaries, which includes only groups of two or more individuals. However, it is a reasonable interpretation of the statutory requirements

for P to determine that S, a sole qualified beneficiary receiving COBRA continuation coverage, is similarly situated to the employee-only category of beneficiaries, for whom P is charged the individual rate, and that the applicable premium for S is the individual rate. Consequently, if P operates in good faith compliance with this interpretation, P will not fail to meet the COBRA continuation coverage requirements by requiring that S pay 102 percent of the individual rate.

The conclusion in situation 2(b) is the same in any case where COBRA continuation coverage is elected only for one qualified beneficiary in a family. Thus, if E and S had a dependent child C who also lost coverage under P as a result of the qualifying event, it would be a reasonable interpretation of the statutory requirements for P to require the payment of up to 102 percent of the individual rate if COBRA continuation coverage were elected only for C (or only for E).

HOLDINGS

(1) Under the facts of situation 1, the plan will not fail to meet the COBRA continuation coverage requirements merely because it, in good faith, requires that two qualified beneficiaries receiving COBRA continuation coverage with respect to the same qualifying event jointly pay up to 102 percent of the family rate.

(2)(a) Under the facts of situation 2(a), the plan will fail to meet the COBRA continuation coverage requirements by requiring that a sole qualified beneficiary receiving COBRA continuation coverage pay 102 percent of the family rate.

(b) Under the facts of situation 2(b), the plan will not fail to meet the COBRA continuation coverage requirements merely because it, in good faith, requires that a sole qualified beneficiary receiving COBRA continuation coverage pay up to 102 percent of the individual rate.

DRAFTING INFORMATION

The principal author of this revenue ruling is Russ Weinheimer of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue ruling, contact Mr. Weinheimer at (202) 622-4695 (not a toll-free number).