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Deciding Whether to Elect COBRA Health Care Continuation Coverage After Enactment of HIPAA

February 9, 1998

INTRODUCTION

A key decision that millions of Americans face each year is whether to elect "COBRA n1" health care continuation coverage. The purpose of this notice is to help people decide whether to elect COBRA coverage. In order to make that decision, they need to know about two laws, COBRA and HIPAA. n2 This notice provides information -- in the form of questions and answers -- about some factors that employees and their families should take into account in deciding whether to elect COBRA continuation coverage.

n1 COBRA is the Consolidated Omnibus Budget Reconciliation Act of 1985, the law that added the health care continuation coverage requirements.

n2 HIPAA is the Health Insurance Portability and Accountability Act of 1996.

An employer maintaining a group health plan is not required to provide this notice. The information in this notice may be used by employers and plan administrators who want to supplement the information they are required to give to covered employees and beneficiaries. The notice may be modified to provide information specific to a plan. The information in this notice is not a substitute for any of the notices required to be furnished under COBRA or for any other information required by law to be furnished to participants or beneficiaries in employer group health plans.

SHOULD I ELECT COBRA HEALTH CARE CONTINUATION COVERAGE?

Questions and Answers

If you lose or leave your job, or if another event occurs that would cause you to lose coverage under an employer's group health plan, you may have the fight to elect COBRA n1 health care continuation coverage under the plan. In making this important decision, there are a number of considerations you should take into account, including:

. whether other group health coverage -- such as coverage under another employer's plan -- is available;

. whether any other available health coverage would exclude benefits for a medical condition that you or a family member has;

. when you will have the fight to enroll in the other coverage;

. the cost, scope, and level of COBRA coverage compared with that of any other available group coverage or individual health coverage; and

. whether a guaranteed fight to buy individual health coverage is important to you.

n1 COBRA is the Consolidated Omnibus Budget Reconciliation Act of 1985, the law that added the health care continuation coverage requirements.

The following questions and answers are divided into three parts. Read Part I for background information about COBRA coverage and an important recent law, HIPAA n2, that might affect your COBRA decision. Read Part II if group health coverage other than COBRA coverage is available to you. Read Part III if you do not have other group health coverage available. These questions and answers reflect the law as in effect in January 1998. n3

n2 HIPAA is the Health Insurance Portability and Accountability Act of 1996.

n3 In most cases, HIPAA is effective by January 1998. However, a later effective date applies to certain employer group health plans and certain health coverage. The questions and answers below assume that HIPAA is in effect.

These questions and answers are available at the IRS Internet site at:

http://www.irs.ustreas.gov

These questions and answers are also available at the Department of Labor (DOL) Internet site at:

http://www.dol.gov/dol/pwba

and at the Health Care Financing Administration (HCFA) Internet site at:

http://www.hcfa.gov

PART I: Overview of COBRA and HIPAA

COBRA

What rights to health care continuation coverage does COBRA provide?

If you are covered by an employer's group health plan, COBRA may give you the right to stay covered even if something happens, like losing your job, that would otherwise cause you to lose coverage. This continuation coverage under an employer's plan is called "COBRA coverage." COBRA coverage usually lasts only for a limited tune, and you usually have to pay for it.

If you are covered by an employer's group health plan, and an event occurs that would otherwise cause you to lose that group health coverage, you need to understand whether COBRA applies to your specific situation and, if so, what your rights are under COBRA.

Which employer plans are subject to COBRA?

COBRA applies to most employer group health plans but not to all of them. For example, it does not apply to plans of employers with fewer than 20 employees or to church plans. Many plans of small employers, though, are subject to State laws similar to COBRA. If you are covered under a plan of an employer with fewer than 20 employees, you can contact the department or commission of insurance in your State to find out if you have fights to continuation coverage under your State's insurance laws. (Federal employees, while not protected by COBRA, have similar continuation coverage rights under another federal law.)

What events result in COBRA rights and for how long is COBRA coverage available?

Even if COBRA applies to your group health plan, it gives fights only to certain people who would be losing health coverage for certain specific reasons. Some of the most common situations that give people COBRA rights are:

. Loss of job. If you are covered by your employer's group health plan and you lose or leave your job, COBRA generally gives you the fight to stay in the employer's plan for up to 18 months. The same fights apply if you are the spouse or dependent child of an employee who loses his or her job. (The 18-month period can be increased to 29 months if someone in the family is disabled.)

. Reduced hours. If you are covered by your employer's group health plan and your hours are reduced, the employer's plan may provide that you lose coverage unless you elect COBRA. In this case, COBRA generally gives you the fight to stay in the employer's plan for up to 18 months. The same fights apply if you are the spouse or dependent child of an employee whose hours are reduced. (The 18-month period can be increased to 29 months if someone in the family is disabled.)

. Death or divorce of spouse. You have the fight to COBRA coverage if you are covered by a group health plan of your spouse's employer and you would lose coverage because your spouse dies or you and your spouse divorce or legally separate. In these cases, COBRA gives you the fight to stay in the plan for up to 36 months.

. Death or divorce of parent. You have the fight to COBRA coverage if you are a dependent child covered by a group health plan of your parent's employer and you would lose coverage because your parent dies or your parents divorce or legally separate. In these cases, COBRA gives you the fight to stay in the plan for up to 36 months.

. Change of Status as Dependent. COBRA also gives you fights if you are a dependent child covered by a group health plan of your parent's employer and you would lose coverage because you reach an age or condition that causes you to no longer be covered as a dependent under the plan. In these cases, COBRA gives you the fight to stay in the plan for up to 36 months.

If you become covered by another group health plan or by Medicare before your COBRA coverage would otherwise end, you usually lose the fight to COBRA coverage. However, you do not lose the fight to COBRA coverage if the new group health plan does not cover illnesses or conditions because you had them before you became covered under the plan.

What are the requirements for obtaining COBRA coverage?

If you want COBRA coverage, you can be required to elect it within 60 days after your coverage would otherwise end. If you elect COBRA coverage, the plan is required to continue the same coverage for you but can charge you for it.

. Cost of COBRA coverage. If you elect COBRA coverage, the plan can require you to pay for the entire cost of coverage, plus a small (2%) additional charge for administration. (If you are getting a longer period of coverage because of disability, you may have to pay more.) The cost of COBRA coverage will probably be more than what you were paying for coverage before. You can pay for COBRA coverage in monthly installments.

How can I get more information about COBRA?

COBRA has a number of special rules, and the information above covers only basic points. The plan administrator of your group health plan is required to give you information about your COBRA fights. You should read that information carefully. If you have any questions about your COBRA rights or would like additional information about COBRA and your group health plan, contact your plan administrator.

If you want to know more, the Department of Labor has a booklet called "Health Benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA)." You can request this booklet free of charge by calling 1-800-998-7542. The booklet is also available on the Internet at:

http://www.dol.gov/dol/pwba

HIPAA

What is HIPAA and why is it important in deciding whether to elect COBRA coverage?

HIPAA is a federal law that regulates employer group health plans and health insurance companies. HIPAA is important to your decision whether to elect COBRA coverage because HIPAA may affect when other coverage is available to you and the types of other coverage available to you, including the extent to which coverage can be restricted under a "preexisting condition exclusion."

What is a preexisting condition exclusion?

Some employer group health plans do not provide coverage for an illness or condition you had before you became covered under the plan. These illnesses or conditions are commonly called "preexisting conditions." A special limit on coverage for a preexisting condition is called a "preexisting condition exclusion."

How are preexisting condition exclusions limited by HIPAA?

HIPAA imposes the following limits on the situations in which employer group health plans may have preexisting condition exclusions and the length of time that such exclusions can apply:

. Treatment or advice received in 6 months before enrollment. An employer group health plan cannot exclude coverage for a preexisting condition you have unless medical advice, diagnosis, care, or treatment was received by you (or recommended to you) for the condition during a 6-month period. If there is a waiting period to get into the plan, the 6-month period is the 6 months before the start of the waiting period. If the plan has no waiting period, the 6- month period is the 6 months before you enter the plan.

. Preexisting condition exclusion cannot last for more than 12 (or 18) months. An employer group health plan cannot exclude coverage for a preexisting condition for more than 12 months after the start of the waiting period for coverage. If there is no waiting period, the plan cannot exclude coverage for a preexisting condition for more than 12 months after you enter the plan. However, if you do not enroll when you are first eligible and do not enroll when you have "special enrollment rights" (as described below), the plan can refuse to cover preexisting conditions for up to 18 months after you enter the plan.

. Previous coverage reduces length of exclusion. If you had other health coverage -- for example, under another group health plan (including COBRA coverage) or under an individual insurance policy, Medicare, or Medicaid -- your new plan's preexisting condition exclusion period generally must be reduced by the period of your other coverage. For example, if you were covered by your old employer's plan for 4 months and your new employer's plan has a 12-month preexisting condition exclusion, your new employer's plan cannot exclude coverage for you for any preexisting condition for more than 8 months. However, your new employer's plan does not have to count coverage before a 63-day break in coverage.

. 63-day break in coverage. If there has been a break of 63 days or more during which you had no health coverage, then the plan can disregard your old coverage that preceded this break. Thus, if you had no coverage for at least 63 days just before you began working for your new employer, the new employer's plan can refuse to cover any preexisting conditions for up to 12 months (or 18 months, depending on when you enroll in the new plan). Time spent in any waiting period for coverage does not count toward the 63-day break.

. No preexisting condition exclusion permitted for pregnancy, or for newborn and adopted children. A plan cannot impose a preexisting condition exclusion relating to pregnancy. In addition, a plan cannot impose a preexisting condition exclusion on newborn children, adopted children, and children placed for adoption who are covered under a plan on the 30th day after their birth, adoption, or placement for adoption.

. State insurance laws. State insurance laws may further limit the extent to which insurance under an employer's plan can exclude coverage for preexisting conditions.

How does HIPAA affect my ability to enroll in an employer's plan?

. Special enrollment rights. HIPAA gives you and your family a special opportunity to enroll in your employer's plan in two situations: (1) if you lose other coverage (including COBRA coverage) or (2) if you have a new spouse or dependent. In these two situations, you (or your spouse or dependent) can be enrolled in your employer's plan even if the plan normally would not allow enrollment at that time.

. Special enrollment because of loss of other coverage. You (and your spouse and dependents) might have been eligible to enroll in your employer's plan at an earlier tune but you decided not to because at that tune you (or your family members) had other coverage (say, under the plan of your spouse's employer). In that case, if you (or your family members) later lose the other coverage, your employer's plan generally must allow you (and your family members) to enroll. The plan has to give you at least 30 days after that other coverage is lost to request enrollment, and must allow enrollment by the first day of the month after the plan receives your completed request.

. This special enrollment fight generally is available only if the coverage is lost because it is no longer available [*13] (and not lost because of failure to pay for it or for cause, such as making a fraudulent claim). You are not required to elect COBRA coverage in order to have a special enrollment fight; however, if you do elect COBRA coverage, you must continue it for the entire period it is available to you in order to preserve this special enrollment right.

. Special enrollment because of a new spouse or dependent. If you marry, then you, your spouse, and any new dependents you get as a result of the marriage have special rights to enroll. If a new child is born, you adopt a child, or a child is placed for adoption with you, then you, your spouse, and the new child also get special rights to enroll.

. To be entitled to special enrollment on account of a new spouse or dependent, you must either be covered under the plan or be eligible to be covered under the plan. The plan has to give you at least 30 days after the marriage, birth, adoption, or placement for adoption to request enrollment.

. If you get married, the plan must cover you, your spouse, and any new dependent by the first day of the month after the plan receives your completed request.

. If you have a new child, the plan must cover you and your spouse and the child from the date of birth, adoption, or placement for adoption.

. The plan cannot exclude you (or make you pay more) based on health status. HIPAA prohibits employer group health plans from discriminating in their eligibility rules on the basis of your health.

. For example, a plan cannot require you to pass a physical examination before you can enroll in the plan, or prevent you from enrolling because of your medical claims experience, medical history, genetic information, evidence of insurability, or disability.

In addition, a plan generally cannot require you to pay a higher contribution than similarly situated people covered under the plan due to your health or any of these other factors.

Which Employer Plans Are Subject to HIPAA?

HIPAA's limits on preexisting condition exclusions, special enrollment rights, and restrictions on discrimination based on health status apply to most but not all employer group health plans. For example, HIPAA generally does not apply to plans where fewer than 2 of the participants are current employees. In addition, special exceptions apply to certain plans maintained by State or local governments and certain plans maintained by church organizations. Further, the HIPAA rules generally do not apply to coverage for certain types of excepted benefits.

Where can I get more information about HIPAA?

HIPAA has a number of special rules, and the information above covers only basic points. If you want to know more about how HIPAA applies to group health plans, the Department of Labor has a booklet called "Questions and Answers: Recent Changes in Health Care Law." You may request this booklet free of charge by calling 1-800-998-7542. The booklet is also available on the Internet at:

http://www.dol.gov/dol/pwba

More information about HIPAA is also available at the Health Care Financing Administration (HCFA) Internet site at:

http://www.hcfa.gov

PART H: Should I Elect COBRA Coverage If I Have Other Group Health Coverage Available?

The questions and answers in this Part are designed to assist you if you have group health coverage available in addition to COBRA coverage. In deciding whether to elect COBRA coverage, an important factor is whether the other group health coverage has a preexisting condition exclusion that applies to you.

How do I know if an employer group health plan has a preexisting condition exclusion that applies to me?

You should first determine whether you received medical advice, diagnosis, care, or treatment (or they were recommended to you) for a medical condition during the 6month period before the start of the plan's waiting period (or before you enter the plan, if there is no waiting period). For this purpose, only medical advice, diagnosis, care, or treatment from a physician or other licensed or authorized person counts.

. If not, the employer's group health plan cannot apply a preexisting condition exclusion to you.

. If so, contact the plan administrator to find out whether and for how long the plan excludes your condition. Then, determine whether and to what extent your prior health coverage will reduce any preexisting condition exclusion period.

. While you must be notified if the plan has a preexisting condition exclusion before the exclusion can be applied to you, the plan is not required to give you this notice before your coverage begins. You have to ask for the information if you need it earlier.

How do I know how long I will be subject to the plan's preexisting condition exclusion?

A plan with a preexisting condition exclusion should specify the maximum period that the exclusion can apply. That period is reduced by your prior health coverage, so you will need to determine how much prior health coverage you had. Remember that if there has been a break of 63 days or more during which you had no health coverage, then the plan may be able to disregard your old coverage. Time spent in any waiting period for coverage does not count toward the 63-day break.

. Proof of Previous Health Coverage. Your old plan must give you a certificate showing how much coverage you had under that plan. The plan must give you the certificate shortly after you become eligible for COBRA coverage, shortly after your coverage ends, and at any other time you request it while you are covered or up to 24 months after your coverage ends. If you become covered by a plan that has a preexisting condition exclusion, you may use the certificate to show your new plan how long you had coverage under your old plan.

. If you do not have a certificate, you can prove your prior coverage by producing documentation or other evidence.

. The new plan must notify you of any length of time that a preexisting condition exclusion may apply to you after counting your previous coverage.

What should I consider in deciding whether to elect COBRA coverage if I have other group health coverage available with a preexisting condition exclusion that applies to me?

If you have other group health coverage available, and that coverage has a preexisting condition exclusion that applies to you, your choices are to have (1) COBRA coverage instead of that other group coverage, (2) the other coverage instead of COBRA coverage (despite the preexisting condition exclusion), or (3) both COBRA coverage and the other coverage.

Your decision may depend on several factors, such as:

. how long your new coverage will be subject to the preexisting condition exclusion;

. how likely you are to need treatment for the preexisting condition before it is covered;

. the seriousness of your preexisting condition, how much the treatment would cost you in the absence of coverage, and the risks to you if treatment is delayed;

. the cost, level and scope of benefits of the COBRA coverage compared to the other coverage; and

. the HIPAA rules that require plans to offer special enrollment rights in certain cases and prohibit enrollment restrictions based on your health status (as discussed in Part I and below in this Part II).

What should I consider in deciding whether to elect COBRA coverage if I have other group health coverage available with no preexisting condition exclusion that applies to me?

If you have other group health coverage available that does not exclude coverage for a preexisting medical condition you have, your decision whether to elect COBRA coverage may be influenced by a variety of factors, including --

. COBRA cut-off due to other coverage. In general, if you get coverage from another employer's group health plan that is not subject to a preexisting condition exclusion, or from Medicare, your COBRA coverage can be cut off. This means that in most situations you would have to decline the other coverage if you decide you prefer the COBRA coverage. (Note that if you have been receiving disability payments from Social Security, you should not decline Medicare coverage without first consulting your Social Security office or the Medicare program.)

. Cost, scope, and level of coverage. Plans differ in their cost, and in the level and scope of benefits (such as particular medical services) they cover. You should take these differences into account in comparing the COBRA coverage with the other available coverage.

. Employers often pay for a large portion of the cost of group health coverage for employees, while people on COBRA coverage typically have to pay for the entire cost of the coverage. This means it usually is cheaper to pay for the employee share of the cost of the other coverage than to pay for COBRA coverage. However, you might prefer more costly coverage if it provides more comprehensive benefits for treatment you may need.

. Waiting period before other coverage begins. If you (or your spouse or parent) get a new job that offers health coverage after some waiting period, you might want to elect to have COBRA coverage for that waiting period.

. Special enrollment rights. If you elect COBRA coverage instead of taking other available group health plan coverage, HIPAA generally gives you the right to enroll in the new plan within 30 days after the COBRA coverage ends, or within 30 days after you get married or have a new dependent child -- even if the plan would not otherwise allow you to enroll at that time.

. But, once you have elected COBRA coverage, your special enrollment right for the loss of the coverage applies only if you keep the COBRA coverage for the entire period it is available to you. (Thus, this special enrollment right does not apply if the COBRA coverage ends because you stop paying for it.)

. HIPAA Limits on Enrollment Restrictions Based on Health Status. If you elect COBRA coverage instead of taking other group health plan coverage, but you later decide you want to enroll in the new plan, your new plan cannot exclude you (or charge you more) on the basis of your health.

PART m: Should I Elect COBRA Coverage If I Do Not Have Other Group Health Coverage Available?

The questions and answers in this Part are designed to assist you if you do not have other group health coverage available.

Why do I need health coverage?

You need health coverage to help pay for medical services for any health problems you might have after your current plan coverage ends.

Does HIPAA give me the right to buy individual health coverage?

If you meet certain requirements, HIPAA gives you the right to buy individual health coverage with no preexisting condition exclusion, without having to give evidence of good health. Depending on the State, the individual health coverage may be a policy issued by an insurance company, or coverage through a State high- risk pool or other governmental program. You must meet all of the following requirements to have this right:

. Your most recent period of health coverage must have been under an employer group health plan.

. If you were eligible for COBRA coverage (or coverage due to a similar State provision) under that plan, you must have elected and continued that coverage for the entire period it was available to you.

. You would not have to continue COBRA coverage for the entire period to maintain these rights if the only COBRA coverage available was in an HMO and you ceased to reside, live, or work in the HMO service area.

. You must have at least 18 months of prior health coverage, disregarding coverage before a break of 63 days or more during which you had no health coverage.

. You must not have lost your most recent health coverage because you failed to pay the premiums or because you committed fraud.

. You must not now be eligible for coverage under any employer group health plan, Medicare, or Medicaid.

. You must not now have any other health insurance coverage.

For more information on your right to buy individual health coverage, contact your State's department or commission of insurance.

What should I consider in deciding whether to elect COBRA coverage?

. COBRA coverage compared to individual health coverage. In comparing COBRA coverage with any individual coverage you have available, consider differences in cost and in the level and scope of benefits (such as particular medical services) covered.

. COBRA coverage compared to no health coverage. You may want to elect COBRA coverage to make sure you are covered for any medical services you need. Many people consider the benefits from having the protection that COBRA coverage provides to be well worth the cost of COBRA coverage.

. You might also want to elect COBRA coverage because, in the future, you could become covered under an employer group health plan that has a preexisting condition exclusion. If you have a 63-day break in coverage, then your existing coverage may be disregarded. COBRA coverage can help you avoid having a 63-day break in coverage and also counts toward reducing any preexisting condition exclusion. See Part I for more information on these rules.

. COBRA coverage to protect your right to buy individual health coverage with no preexisting condition exclusion. As described above, if certain requirements are met, you and your family may have the right to buy individual health coverage with no preexisting condition exclusion, without having to give evidence of good health. These requirements include electing COBRA coverage as long as it is available to you. THUS, FAILURE TO ELECT COBRA COVERAGE MAY CAUSE YOU TO LOSE YOUR GUARANTEED RIGHTS TO PURCHASE INDIVIDUAL HEALTH COVERAGE.

Is there any State-sponsored coverage available to me?

Individuals in a family whose income is temporarily reduced (for example, due to loss of a job) may be eligible for low-cost or no-cost health insurance through public programs. Children are especially likely to be eligible for low-cost coverage. Eligibility for these programs varies by State and sometimes within a State. You can contact State government officials to find out if you are eligible.

CONCLUSION

There are many factors to consider in making the important decision whether to elect COBRA continuation coverage for you and each of the members of your family. The information above highlights factors that people in typical circumstances may want to take into account in deciding whether to elect COBRA coverage. You will need to consider your own family's circumstances in making your decision.