November 2016

Compliance Playbook: Focus on COBRA

To avoid a red card on COBRA compliance, your organization must perfect its game plan for meeting timing, notice and documentation requirements, and tackling the intersection of COBRA requirements with other laws such as ERISA and the Patient Protection and Affordable Care Act (“PPACA”). Most health plan sponsors are aware that coverage should be extended when there are certain Qualifying Events, but there is much more to COBRA compliance than just offering continuation coverage. As an employer committed to providing comprehensive benefits and compensation to your employees, consider the issues noted below and the risks they may pose to your organization’s ability to meet cost targets, sustain benefits and compensation programs, and compete for top talent. Will your organization score a goal with COBRA compliance?

1. Score on offers of COBRA continuation. Employers may fall short of the goal line on COBRA by failing to offer continuation coverage for all of the required benefits. Generally, COBRA continuation must be offered for benefits that provide “medical care.” Those benefits include medical, dental, vision, group cancer benefits, health flexible spending accounts, health reimbursement arrangements, employee assistance programs (“EAPs”) that provide medical care (such as counseling sessions), and other similar programs. Certain benefits, such as ongoing flu shot programs for all employees, not just employees covered under a medical plan, are generally stand-alone medical benefits that employers may overlook as separate COBRA-eligible benefits. In addition, employers with fully insured medical coverage may forget to offer continuation coverage for their self-insured health reimbursement arrangements. Employers should be careful to verify that they have included the correct benefits in their COBRA offerings — particularly when introducing new benefits. Has your organization correctly determined which of its benefits are subject to COBRA continuation?

2. Check your roster. Identify the correct individuals as Qualified Beneficiaries. After determining which benefits are subject to COBRA, an employer must also determine which individuals are eligible for COBRA continuation coverage. These individuals are the COBRA Qualified Beneficiaries. The COBRA regulations contain very specific events prescribing when an individual is eligible for COBRA continuation. However, some situations can create confusion over whether COBRA continuation is available and thus whether an individual is a Qualified Beneficiary. For example, an employee may drop a spouse during annual enrollment because the individual and his or her spouse are in the process of obtaining a divorce. At annual enrollment, the soon-to-be-ex-spouse would not be a Qualified Beneficiary. However, the ex-spouse may have a right to a “springing” COBRA entitlement upon finalization of the divorce. Under the “anticipation-of-divorce rule,” if a covered employee eliminates or reduces their spouse’s coverage in anticipation of their divorce (or legal separation), then a plan is required to make COBRA continuation coverage available to the spouse as of the date of the divorce (or legal separation), instead of when the coverage is dropped at annual enrollment. The ex-spouse thus becomes a Qualified Beneficiary at the time of the divorce (or legal separation). In addition, unlike other individuals added during COBRA continuation coverage, a newly born child added becomes a Qualified Beneficiary with...
independent COBRA rights and must be treated like any other Qualified Beneficiary. Has your organization ensured that it has a process to correctly identify Qualified Beneficiaries?

3. Watch the game clock. Be aware of added time for individuals with qualifying disabilities. The maximum period of COBRA continuation coverage may be extended in five ways, and the most confusing way involves an 11-month extension due to disability. In order for the disability extension to apply, the Qualifying Event must be the covered employee’s termination of employment or reduction of hours. The Qualified Beneficiary must also have been determined under the Social Security Act to have been disabled at any time during the first 60 days of COBRA coverage, and must have notified the plan administrator of the Social Security disability determination within 60 days after the latest of: (a) the date of the Social Security disability determination; (b) the date of the employee’s termination of employment or reduction of hours; (c) the date on which the Qualified Beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event; or (d) the date on which the Qualified Beneficiary is informed, through the furnishing of the plan’s summary plan description (“SPD”) or COBRA initial notice, of both the responsibility to provide the notice of disability determination and the plan’s procedures for providing such notice to the administrator. Lastly, in order for the disability extension to apply, the Qualified Beneficiary must notify the plan administrator of the Social Security disability determination before the end of the 18-month period following the employee’s termination of employment or reduction of hours. Do you have clear policies and procedures for COBRA extensions and understand the timing requirements to determine eligibility for an extension?

4. Avoid a violation by using the right notices at the right time. Compliant COBRA administration requires providing specific notices on a timely basis. Many employers are familiar with the Initial Notice and the Election Notice, but employers may overlook requirements to provide Notices of Unavailability, Notices of Early Termination, Qualifying Event notices (to the plan administrator), and notices of premium shortfalls. Each of these has specific timing requirements. In addition, employers subject to ERISA must include specific COBRA information in their SPDs. Employers must also provide enrollment materials to COBRA Qualified Beneficiaries during annual enrollment, which may have to be modified to remove non-COBRA benefit elections, such as elections for long-term disability or life insurance coverage. Employers should have a checklist to ensure that they know when to provide specific notices and a means to document when notices have been provided. Do you have a system in place to ensure that you are timely delivering COBRA-required notices?
As a trusted advisor, Arthur J. Gallagher & Co. has developed its Compliance Playbook series to help employers identify targeted employee benefits compliance issues as part of an overall game plan. Employers should carefully evaluate their health and welfare plans to determine if they are in compliance with both federal and state law. If you have any questions about one or more of the Compliance plays listed above or would like additional information on how Gallagher constantly monitors laws and regulations impacting employee benefits and supports employers in their compliance efforts, please contact your Gallagher Benefit Services representative.

This is a preview of the November issue of the Compliance Playbook. If you would like the full version of the Compliance Playbook or would like additional information on how Gallagher constantly monitors laws and regulations impacting employee benefits and supports employers in their compliance efforts, please contact your Gallagher Benefit Services representative or click here to Contact Us via ajg.com.

The intent of this analysis is to provide you with general information. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues should be addressed by your organization’s general counsel or an attorney who specializes in this practice area.