

AB1401
California COBRA
Effective 9/1/03

NOTE: As of this writing, there are numerous ambiguities in this law. The information below represents an interpretation of this legislation as of December 2002. We expect clarification on many provisions prior to the enactment date of September 1, 2003. You will be advised of changes and final regulations prior to the enactment date.

COBRA Coverage

Individuals who begin receiving COBRA coverage on or after January 1, 2003 will be eligible for additional COBRA coverage periods in some cases. Every group contract entered into, amended, or renewed before September 1, 2003, shall be subject to the provisions of this section. This applies only to health plans and not dental-only or vision-only plans. The benefit provisions begin on September 1, 2003.

Employers with less than 20 employees – not subject to Federal COBRA

Employers would be required to provide Cal-COBRA coverage for a 36-month period for all Qualified Beneficiaries (including the employee) after a Qualifying Event unless:

1. An individual fails to make a premium payment;
2. CAL-COBRA requirements no longer apply to the individual;
3. An employer (or successor employer) no longer provides any health coverage;
4. A Qualified Beneficiary moves out of a plan's service area; or
5. A Qualified Beneficiary commits fraud or deception in the use of plan services.

Employers with more than 20 employees – subject to Federal COBRA

Employers would be required to offer Cal-COBRA coverage to individuals that would have lost coverage after 18 months (or 29 months in the event of a Disability Determination). The total coverage period for Federal COBRA and Cal-COBRA will not exceed 36 months from the date of the original Qualifying Event.

Of special interest, a period of Cal-COBRA coverage applicable after the exhaustion of Federal COBRA coverage will have two significant differences from the Federal COBRA plan:

1. State-standardized rates, similar to the rate scheme already in place for small group plans in California will be the maximum permissible charge for coverage. Thus, it appears that employees and receiving special Cal-COBRA coverage extensions will not be paying the premium charged to the employer for coverage provided under the normal COBRA plan.
2. The benefit program will be one of two plans filed with the state by the insurance carrier. Therefore the plan may also have different benefits. The insurance carriers are commissioned with the responsibility of providing plan matrixes for eligible individuals.
3. Coverage extension does not apply to non-core coverages – such as stand alone dental or vision plans.

Insurance carriers are required to offer two plans for selection. This means that a Qualified Beneficiary eligible for extended coverage will have another enrollment period and will be able to make a selection between the two plans offered. AB1401 requires the insurance carrier to provide the notification to the Qualified Beneficiary plan participants at the time of loss of coverage under the Federal plan – which will include a plan matrix and applicable rates. In procedures identical to those currently in place for

small employer groups in California, the insurance carrier will handle the notification and enrollment.

Violations would be punishable as a misdemeanor criminal offense.

COBRA Notices

The COBRA Qualifying Event notice must be amended to include information on the Cal-COBRA coverage extensions available to large groups and the provision of a 36-month coverage period for all Qualified Beneficiaries of small employer groups.

Conversion Rights Health Plans

Conversion to a non-group individual policy must be provided to all employees losing coverage on a group health plan within 15 days of the date that coverage will terminate. Insurers may offer two plans that have been approved by the state. Exceptions to conversion rights include:

1. Plans replaced by the employer within 15 days
2. Failure of the employee to pay required premium contributions
3. Termination of the employee for good cause
4. Fraud or omissions on the application for insurance coverage on the group plan
5. Self-Insured employer plans
6. Individuals eligible for Medicare
7. Individuals covered under another group or individual health policy
8. Individuals who have not had continuous coverage in the 3-month period preceding the coverage termination date. The "coverage termination date" is the expiration date of the maximum period of COBRA continuation coverage.

Currently conversion plans require the individual to apply and make premium payments within 31 days of the loss of coverage. This bill extends the application and payment period to 63 days from the loss of coverage.

Coverage will include (at the employee's discretion) all family members who were covered on the group contract at the time of loss of coverage.

Though insurance certificates will be required to provide information about Conversion coverage, employers will have the sole responsibility for notification of the availability, terms and conditions of the coverage. The notification must be provided within 15 days of the termination of the group coverage. Group coverage will not be deemed terminated until the expiration of any continuation of group coverage (such as COBRA).