

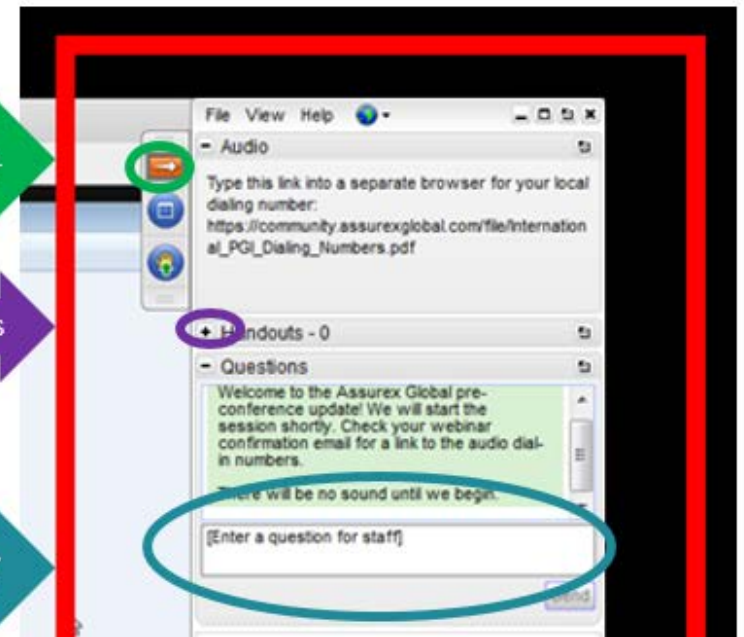
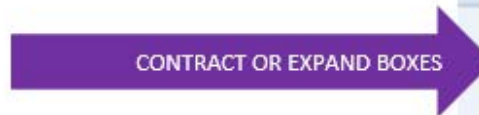
July 27, 2017

COBRA is Here to Stay

Presented by Benefit Comply

COBRA is Here to Stay

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



COBRA is Here to Stay

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- Woodruff-Sawyer & Co.
- Wortham Insurance & Risk Management

Employers Subject to COBRA

- **Employers with 20 or More Employees**
 - 20 employees on at least 50% of its typical business days during the previous calendar year
 - Must count all employees not just employees covered by the plan
 - Includes both full-time and part-time employees
 - Part-time employees counted on a pro-rated basis
- **Small Employers May be Subject to State Continuation Laws**
 - State continuation laws apply only to fully-insured plans
 - Be careful of new small employer self-insured arrangements
 - A self-insured employer with less than 20 employees would not be subject to COBRA or state continuation laws

Plans Subject to COBRA

- **Plans Subject to COBRA**
 - Medical Plans, including HRAs
 - Dental, Vision, Rx
 - On-site Health Care and EAPs
 - Health FSAs
- **Plans Not Subject to COBRA**
 - Life Insurance, Disability, Long Term Care, HSAs
- **Single (Bundled) vs. Separate Plans**
 - Based on “instruments governing the plan”
 - Not determined solely on how employees are offered coverage
 - Employer has some discretion depending on plan documentation

Plans Subject to COBRA

- Employee Assistance Plans (EAPs)
 - If the EAP pays for or provides medical services, it is a health plan (e.g. counseling visits with a health care professional)
 - If EAP provides only referrals – then likely not a health plan
- Onsite Health Clinic
 - Would include a medical provider offering a discount to employees who receive services onsite
 - Applies only if providing medical services other than just work-related injury and illness
 - COBRA premium based on cost to provide service or discount
- Note on ACA W-2 Reporting
 - If employer charges COBRA premium for EAP or onsite health clinic, these benefits must be included in W-2 reporting

Plans Subject to COBRA

- Health Reimbursement Accounts (HRAs)
 - Coverage available at time of event
 - Equals the balance available in the account to the individual at time of event
 - In most cases COBRA qualified beneficiary (QB) can continue coverage and receive employer funding for future plan years as long as they are eligible for COBRA
 - Spouses and dependents could elect HRA independently
 - A spouse or dependent electing HRA coverage independently must receive full benefit of HRA
 - Active employee may still receive their full benefit

Plans Subject To COBRA

- Health Flexible Spending Accounts (HFSAs)
 - Must offer if benefit available is greater than premium due for remainder of year
 - Monthly COBRA FSA premium = 1/12 of annual election +2%
 - Spouses and dependents can continue FSA after COBRA event

		Benefit
1/1/17	Employee Elects HFSA deductions of \$2400	\$2400
2/1/17	Employee submits \$400 claim	\$2000
6/30/17	Spouse Divorces Employee – Benefit still available	\$2000
	Premium for remainder of plan year	\$1224
	Plan Must Offer COBRA	

		Benefit
1/1/17	Employee Elects HFSA deductions of \$2400	\$2400
2/1/17	Employee submits \$2000 claim	\$ 400
6/30/17	Spouse Divorces Employee – Benefit still available	\$ 400
	Premium for remainder of plan year	\$1224
	Plan Not Required to Offer COBRA	

COBRA

- COBRA & Health Flexible Spending Accounts (HFSA's)
 - \$500 carryover option
 - HFSA allowed to make available a \$500 carryover of unused funds to next plan year
 - To take advantage of the carryover, a plan can require participation in HFSA with a minimum employee payroll contribution in year 2
 - COBRA premiums for HFSA with roll-over provision
 - Carryover not considered in setting COBRA premium
 - Example – employee elects \$2400 payroll reduction to fund HFSA and also has carried over \$500 from previous year for total benefit available of \$2900
 - COBRA premium would still be \$204 per month (\$200 + 2%)

COBRA

- COBRA & Health Flexible Spending Accounts (HFSA)
 - \$500 carryover option
 - Special HFSA COBRA offer rule in HFSA with carryover
 - COBRA only required if benefit available exceeds amount individual would have to pay for remainder of plan year
 - Carryover is included in “amount available”

EXAMPLE:

1/1/17	Employee elects HFSA deductions of \$2400 Employee has \$500 roll-over available from previous year	\$2900 benefit
2/1/17	Employee submits \$1500 claim	
6/30/17	Employee quits – benefit still available (\$2900 - \$1500)	\$1400
	Premium for remainder of plan year (6 months x \$204)	\$1224
	Plan must offer COBRA	

Qualified Beneficiaries

- Qualified Beneficiaries (QB)
 - Employee, spouse or child covered the day before the event, and a child born to a former employee already on COBRA
- QBs Must be Given Same Plan Rights as Similarly Situated Active Employees
 - Examples (actual rights would depend on rules for employees of a particular plan)
 - Employee's former spouse on COBRA adds new spouse after remarrying
 - Former dependent on COBRA could switch plans during open enrollment

Qualifying Events

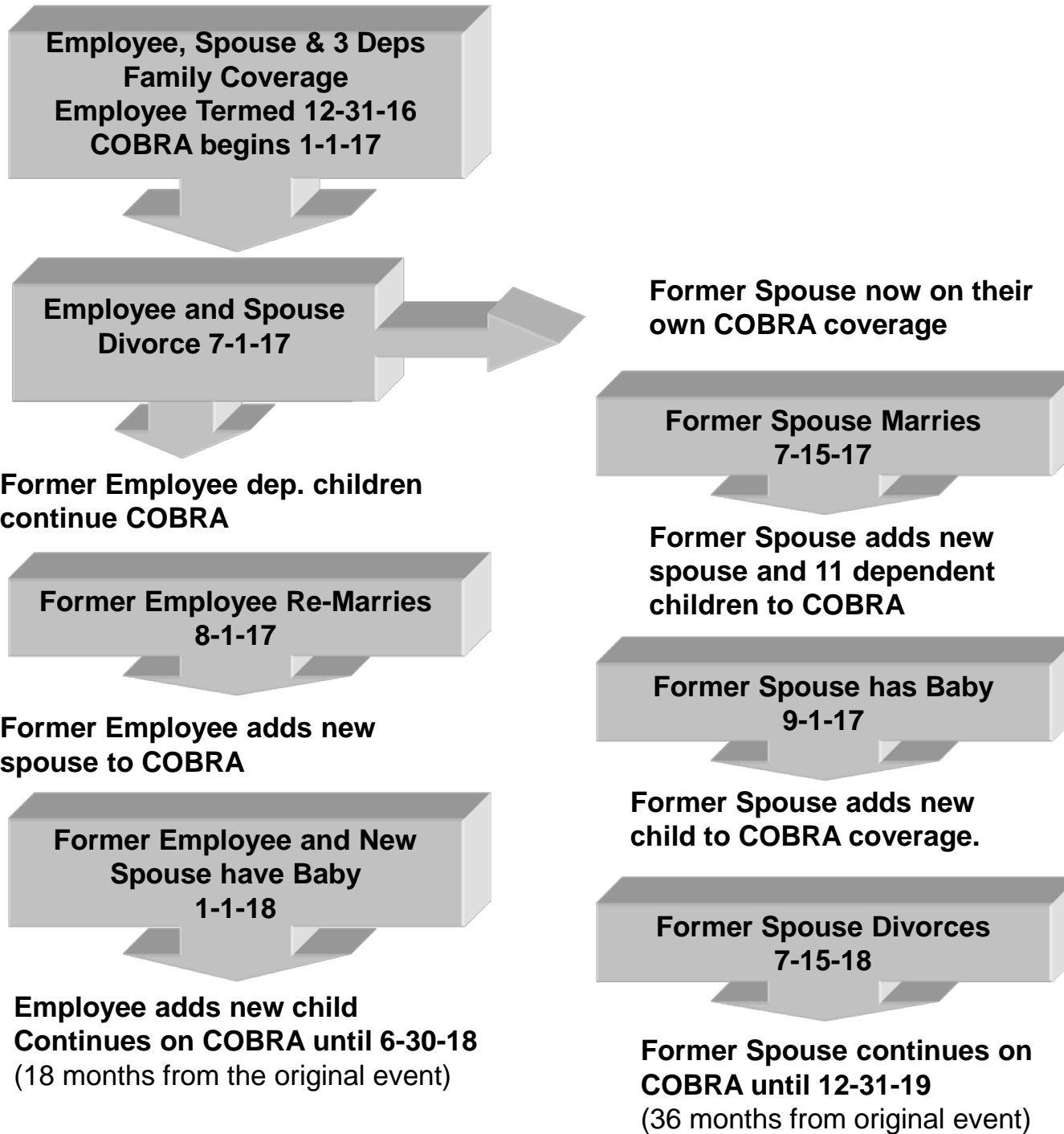
- **Definition**
 - One of the events listed in the law will cause the loss of coverage now or at some time in the future
- **18-Month Events for Employee, Spouse or Child**
 - Termination of employment
 - Reduction in hours
- **36-Month Events for Spouses and Children Only**
 - Death of employee
 - Loss of dependent status
 - Employee's entitlement to Medicare
 - Divorce or legal separation from employee

Qualifying Events

- **Not All Loss of Coverage is a COBRA-Qualifying Event**
 - Voluntary termination of coverage during open enrollment
 - Loss of coverage due to spouse eligibility rule change
- **Special Merger and Acquisition Rules**
 - IRS rules govern COBRA rights in mergers and acquisitions
 - Rules differ for stock vs. asset sales
- **Loss of Coverage in Anticipation of a COBRA Event**
 - Could trigger COBRA rights for an individual
 - Particularly problematic in the case of divorce

Qualifying Events

- **Total Disability Extension**
 - Additional 11 months of COBRA if individual qualifies for Social Security Disability
 - Individual must notify employer within 60 days of receiving approval for total disability benefits
 - Employer may charge 150% of premium for months 19 - 29
- **Multiple Qualifying or Second Events**
 - A QB experiences a second event when already on COBRA
 - Qualifies for balance of 36 months
 - Divorce, death of former employee, dependent ineligibility
 - IRS Revenue Ruling 2004-22
 - Employee's Medicare entitlement is not a second event for spouse or dependents



DOL Final Notice Rules

- Initial Notice Timing and Delivery
- Employer Notice to Administrator
- Employee and Beneficiary Notice to Employer Requirements
- Election Notice Requirements
- Notice of Unavailability of COBRA
- Notice of Termination of COBRA

Initial General Notice

- Timing
 - Must be delivered within 90 days of coverage
- Specific Content Requirements
 - DOL model notice available in both English and Spanish at:
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>
- Sending the General Notice
 - “The Department will consider...that an employer has made a good faith effort at compliance...if this notice is furnished to each covered employee and his or her spouse (if any) by first class mail to the covered employee’s last known address.”
 - When is a notice to the spouse required?
 - Spouses added to plan after employee’s initial enrollment
 - Notice directly to minor children not required unless at different address
 - In-hand to employee allowed, but if spouse is covered, notice must be sent to home
- Failure to Notify Spouse with Initial Notice is a Leading Cause of COBRA Liability

Employee/Beneficiary Notice Rules

- Employee or Beneficiary must Notify Employer of Certain Events within 60 days
 - Divorce/Separation & Loss of Dependent Status
 - Second Events
 - Disability Extension
- Reasonable Procedures
 - Employers must establish “reasonable procedures”
 - Employer may require written notice
 - If employer fails to implement procedures, employee or beneficiary can notify verbally

Qualifying Event Election Notice Rules

- Timing of Election Notice
 - Employer has 30 days to notify administrator
 - Administrator has 14 days to send notice
- Delivery of Notice
 - One notice to all residing at same address is sufficient
- DOL Model Notice Available in both English and Spanish at:
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>
- Extending Employee Coverage Past COBRA Event Date
 - Allowed by IRS rules, but employer risks liability if carrier or stop-loss carrier does not cover extended time

Other Notices

- **Notice of Unavailability of Continuation Coverage**
 - Required if employee/QB notifies employer of divorce/separation, dependent ineligibility, disability or a second event
 - Notice must be sent within 14 days
 - Notice must give reason individual is ineligible
- **Notice of Termination of COBRA Coverage**
 - Any reason for early termination of COBRA
 - Reason coverage was terminated
 - Date of coverage termination
 - Rights individual has for alternative or conversion coverage
 - Sent as soon as “practicable”
- **Conversion Notice**
 - Required during the 180-day period ending on the end of COBRA period

COBRA Premiums

- Setting Self-Funded COBRA Premiums
 - Actuarial Method
 - Premium “shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which...is determined on an actuarial basis”
 - Past-Cost Method
 - Premium equals “the cost to the plan for similarly situated beneficiaries for the same period during the preceding determination period...adjusted by...[inflation]”
 - Rate must be set for a 12-month determination period
 - e.g., cannot “adjust” COBRA rate every 6 months
 - Generally should not use the “maximum liability rate” set by stop-loss carrier

COBRA Premiums

- Setting HRA COBRA Premiums
 - Use similar method to any other self-funded plan (actuarial or past cost)
 - HRA COBRA premiums must not reflect the HRA balance of a particular individual
 - New HRAs with no prior cost history
 - TPA may be able to provide average utilization data for plan designs similar to that offered by the employer

COBRA Premiums

- Grace Period for Premium Payments
 - 45 days for initial payment once election is made
 - 30 days from beginning of coverage period for subsequent payments
 - Grace period is from beginning of coverage period, not arbitrarily assigned by employer
- Short Premium Payments
 - Premium “not significantly less” than due
 - Plan must accept payments as payment in full or notify participant of shortage and give 30 days to correct
 - “Not significant” is lesser of \$50 or 10% of amount due
 - Example
 - Due \$1100, QB sends \$1060 (\$40 short) - accept or notify
 - Due \$1100, QB sends \$1000 (\$100 short) - do not accept

Termination of COBRA

- Termination for Other Coverage
 - Covered by a new plan with no pre-existing conditions which apply to individual
 - Interesting impact of ACA – other health plans will generally not have a pre-existing limit after 2014, making it less likely that an individual would need to continue COBRA after becoming eligible for other coverage
 - COBRA can be terminated if QB enrolls in Medicare after COBRA is elected

COBRA and FMLA

- Continuation Coverage Under COBRA
 - COBRA qualifying event
 - Taking of FMLA leave is NOT a COBRA qualifying event even if employee chooses not to continue health coverage during the leave
 - A COBRA event occurs if employee, spouse or dependent child is covered on the day before the first day of the FMLA leave, and the employee does not return to work at the end of the leave
 - COBRA coverage begins as of the last day of the employee's FMLA leave
 - COBRA rules when health coverage is terminated during FMLA leave
 - COBRA still does not begin until end of employee's FMLA leave
 - There may be a "gap" in coverage before the onset of COBRA
 - Employer may not make COBRA contingent on the employee paying premiums due from FMLA leave

COBRA and FMLA

12-Week FMLA Leave

FMLA begins June 1, 2017 – employee chooses not to pay for health coverage

No health coverage for 12 weeks of FMLA during June, July and August

Employee's FMLA eligibility ends – Employer offers COBRA now

COBRA runs 18 months from this point forward

COBRA and Health Reform

- General ACA/COBRA Issues
 - ACA has not changed any COBRA notice requirements
 - Setting COBRA premiums properly for self-funded plans is more important than ever – a number of ACA elements are impacted by the “COBRA rate”
 - W-2 reporting
 - Cost of plan for Cadillac tax purpose
 - IRS employer reporting

COBRA and Health Reform

- Rules that May Reduce the Need for COBRA
 - ACA individual health insurance rules
 - No medical underwriting – No pre-existing limitations
 - ACA subsidies for low and middle income individuals purchasing individual coverage on public Exchanges
 - May make Exchange coverage cheaper than employer's COBRA plan for those who qualify - especially lower income individuals

COBRA and Health Reform

- Rules that May Lead to Continued COBRA Activity
 - Most Exchanges will only allow one annual open enrollment period and certain special enrollment periods for the purchase of new individual coverage
 - Loss of employer coverage will be a special enrollment opportunity, but there could still be a break in coverage between loss of group coverage and start of individual coverage on the Exchange
 - Individual mandate will impose tax on those without insurance
 - COBRA may be the best option for some to avoid the tax
 - Increases in individual health insurance rates
 - Employer COBRA plan may still be the cheapest option for some – especially those who do not qualify for ACA subsidies

COBRA and Health Reform

- Possible Changes in Current Republican Proposals
 - May lead to increase in COBRA usage
 - Decrease in subsidy amounts for individual insurance
 - Cuts to Medicaid coverage
 - One version of a Senate bill included a proposal to allow tax credits to be used to pay for COBRA coverage
 - May lead to decrease in COBRA usage
 - If cheaper “skinny” plans are allowed, some may chose these over COBRA coverage

COBRA

- COBRA
 - DOL issued model COBRA notice language encouraging COBRA QBs to explore coverage through a public Exchange
 - Loss of employer coverage is an Exchange special enrollment event
 - COBRA election and subsidy eligibility
 - COBRA QB may qualify for subsidized coverage through the Exchange if they decline COBRA continuation
 - If an individual elects COBRA continuation, they will be ineligible for subsidies since they are covered by an employer plan
 - Individual who has elected COBRA cannot enroll in an individual plan until the next Exchange open enrollment, the individual experiences a special enrollment event, or COBRA expires

COBRA

- COBRA
 - Employers must still offer COBRA, but should aggressively communicate individual health insurance options through the Exchange to all COBRA QBs
 - Employers should also consider a communication to existing COBRA QBs about the annual Exchange open enrollment period
 - Including divorced spouses and children aging off the employer plan, not just terminating employees
 - May be a better option for the individual
 - Keeps COBRA QBs off the employer plan

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