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Health Insurance Continuation Coverage Under COBRA

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Health Insurance Continuation Coverage Under COBRA

Abstract

Health insurance helps to protect individuals and families against financial loss. Having health insurance also promotes access to regular health care. Most Americans with private health insurance are covered through an employer, or through the employer of a family member. A recent study by the Robert Wood Johnson Foundation found that in 2012, 59.5% of insured Americans had their insurance through an employer.

When an employee is terminated, his or her employer-sponsored health insurance usually ends within 30 to 60 days. If that health insurance is family coverage, then a worker's family members can also become uninsured. Even if the worker finds another job with health benefits, a family can experience long periods of uninsurance, as they wait to qualify for the new benefit. This same problem is also faced by families that experience a reduction in hours in the workplace, the death of a worker, or a divorce.

In 1985, Congress passed legislation to provide the unemployed temporary access to their former employer's health insurance. Under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272), an employer with 20 or more employees who provided health insurance benefits must provide qualified employees and their families the option of continuing their coverage under the employer's group health insurance plan in the case of certain events. The former employee is responsible for paying the entire premium. Employers who fail to provide the continued health insurance option are subject to penalties.

This report provides background on COBRA, a brief explanation of the program, its origins, issues, and how the Affordable Care Act might impact COBRA.

Keywords

Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, health insurance, Affordable Care Act, ACA

Comments

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Health Insurance Continuation Coverage Under COBRA

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Summary

Health insurance helps to protect individuals and families against financial loss. Having health insurance also promotes access to regular health care. Most Americans with private health insurance are covered through an employer, or through the employer of a family member. A recent study by the Robert Wood Johnson Foundation found that in 2012, 59.5% of insured Americans had their insurance through an employer.

When an employee is terminated, his or her employer-sponsored health insurance usually ends within 30 to 60 days. If that health insurance is family coverage, then a worker's family members can also become uninsured. Even if the worker finds another job with health benefits, a family can experience long periods of uninsurance, as they wait to qualify for the new benefit. This same problem is also faced by families that experience a reduction in hours in the workplace, the death of a worker, or a divorce.

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COBRA coverage usually lasts for 18 months, but it can be extended up to a total of 36 months, depending on the nature of the triggering event. Those who take up their COBRA benefits are required to pay up to 100% of the premium, which averaged \$15,745 for a family in 2012, plus an additional 2% for the administrative costs incurred.

COBRA can be an important source of health insurance for the recently unemployed, but it also benefits the disabled, the retired, the divorced, and their families. For example, spouses and dependent children can also qualify for COBRA benefits in the event of divorce or the death of the family member with employer-sponsored health coverage. Since 2009, about 3 million individuals and families have used COBRA benefits each year.

Critics argue that COBRA addresses the health insurance problems of only a small number of Americans, and that the high cost of premiums makes COBRA coverage unaffordable to many who need it. Others maintain that COBRA has resulted in extra costs for employers, as well as the added administrative burden of providing benefits to people no longer working for them.

Implementation of Affordable Care Act provisions, such as the health insurance exchanges, insurance reforms, and premium subsidies for lower-income individuals in 2014, may make COBRA benefits less valuable for certain individuals and families.

This report provides background on COBRA, a brief explanation of the program, its origins, issues, and how the Affordable Care Act might impact COBRA.

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Background

Most Americans with private group health insurance are covered through an employer, or through the employer of a family member. In 2012, about 61% of private employers offered health insurance coverage to their full-time employees, and most employers extended those health benefits to the families of their workers.¹ A recent study by the Robert Wood Johnson Foundation found that in 2012, 59.5% of insured Americans had their insurance through an employer.² When workers lose their jobs, they can also lose their health insurance. If that health insurance is family coverage, then a worker's family members can also become uninsured.

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272) requires employers who offer health insurance to continue coverage for their employees under certain circumstances. Congress enacted the legislation to expand access to coverage for at least those people who became uninsured as a result of changes in their employment or family status. Although the law allows employers to charge 102% of the group plan premium, this can be less expensive than similar coverage available in the individual insurance market. The law affects private sector employer group health plans through amendments to the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. COBRA continuation coverage for employees of state and local governments is required under amendments to the Public Health Service Act. Continuation coverage similar to COBRA is provided to federal employees and employees of the Washington, DC, district government through the law authorizing the Federal Employees Health Benefits program under Title 5 of the *U.S. Code*.

Before enactment of COBRA, if an employee's job was terminated (voluntarily or involuntarily), the insurance offered by the employer also ceased, usually within 30 to 60 days. Women were especially vulnerable to loss of insurance coverage if they became unemployed, widowed, or divorced. Although some employers offered the option of buying into the group plan, there was no certainty of that option. In 1985, 10 states had laws requiring insurance policies sold in their states to include a continuation of coverage option for laid-off workers. However, self-insured employers (employers that assume the risk of the health care costs of their employees rather than using private insurers) were not regulated by these state-mandated benefit laws; self-insured plans were regulated at the federal level under ERISA. Health insurance coverage for these affected workers and their families was not consistently available.

COBRA Coverage

“COBRA” refers to Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L. 99-272. The regulations for COBRA are written by the Department of Labor (DOL) and the Internal Revenue Service (IRS).

This section provides a simplified explanation of who qualifies and how, what the responsibilities of the employer are, and what the employee is responsible for. More detailed information is

¹ Kaiser Family Foundation and Health Research Education Trust, *Employer Health Benefits 2012 Annual Survey*, September 2012, at <http://ehbs.kff.org/pdf/2012/8345.pdf>.

² Robert Wood Johnson Foundation, *State-Level Trends in Employer-Sponsored Health Insurance, a State-by-State Analysis*, April, 2013, at <http://www.rwjf.org/content/dam/farm/reports/reports/2013/rwjf405434>.

available from DOL's COBRA Continuation Coverage, Employee Benefits Security Administration, at <http://www.dol.gov/ebsa/cobra.html>.

General Requirements

Under COBRA, employers who provide health insurance benefits must offer the option of continued health insurance coverage at group rates to qualified employees and their families who are faced with loss of coverage due to certain events. Coverage generally lasts 18 months but, depending on the circumstances, can last for longer periods. COBRA requirements also apply to self-insured firms. An employer must comply with COBRA even if it does not contribute to the health plan; it needs only maintain such a plan to come under the statute's continuation requirements.³

Covered Employers

COBRA covers all employers, with the following exceptions:

- Small employers. Employers with fewer than 20 employees are not covered under COBRA. An employer is considered to meet the small employer exception during a calendar year if on at least 50% of its typical business days during the preceding calendar year it had fewer than 20 employees.
- Church plans.
- Federal, state, and local governments. Although federal employees are not covered under COBRA, they and employees of the Washington, DC, district government have been entitled to temporary continuation of coverage (TCC) under the Federal Employees Health Benefits Program (FEHB) since 1990.⁴ Continuation coverage for state and local employees is mandated under the Public Health Service Act with provisions very similar to COBRA's protections. See 42 U.S.C. Section 300bb-1 et seq.⁵

Qualified Beneficiaries

In general, a qualified beneficiary is

- an employee covered under the group health plan who loses coverage due to termination of employment⁶ or a reduction in hours;

³ On February 3, 1999, the Internal Revenue Service (IRS) published final rules (64 *Federal Register* 5160-5188), effective January 1, 2000, defining COBRA coverage requirements. Final rules addressing COBRA issues applying to business reorganizations, bankruptcy, and COBRA's interaction with the Family and Medical Leave Act were issued on January 10, 2001 (66 *Federal Register* 1843-1859). Final rules addressing notification requirements were issued on May 24, 2004 (69 *Federal Register* 30083-30112).

⁴ Some variations exist between COBRA and FEHB TCC. For example, there are different eligibility requirements under FEHB, there is no extended coverage for disabled individuals, and there are no bankruptcy provisions. However, the length of coverage and qualifying events under both plans are the same. For more information, see the *Federal Employees Health Benefits Program Handbook*, at <http://www.opm.gov/insure/health/reference/handbook/fehb16.asp>.

⁵ Federal, state, and local workers were eligible for the temporary premium subsidy under ARRA.

⁶ A termination of employment (for reasons other than gross misconduct) can be either voluntary or involuntary. (continued...)

- a retiree who loses retiree health insurance benefits due to the former employer's bankruptcy under Chapter 11;
- a spouse or dependent child of the covered employee who, on the day before the "qualifying event" (see below), was covered under the employer's group health plan; or
- any child born to or placed for adoption with a covered employee during the period of COBRA coverage.

Qualifying Events

Circumstances that trigger COBRA coverage are known as "qualifying events." A qualifying event must cause an individual to lose health insurance coverage. Losing coverage means ceasing to be covered under the same terms and conditions as those available immediately before the event. For example, if an employee is laid off or changes to part-time status resulting in a loss of health insurance benefits, this is a qualifying event. Events that trigger COBRA continuation coverage include

- termination (for reasons other than gross misconduct) or
- reduction in hours to the point where the employee no longer qualifies for the benefit.

Spouses and dependent children can experience the following qualifying events leading to their loss of health insurance coverage:

- the death of the covered employee,
- divorce or legal separation from the employee,
- the employee's becoming eligible for Medicare, and
- the end of a child's dependency under a parent's health insurance policy.

Under the following circumstances, a covered employer must offer a retiring employee access either to COBRA or to a retiree plan that satisfies COBRA's requirements for benefits, duration, and premium:

- If a covered employer offers no retiree health plan, the retiring employee must be offered COBRA coverage.
- If the employer offers a retiree health plan but it is different from the coverage the employee had immediately before retirement the employer must offer the option of COBRA coverage in addition to the offer of the alternative retiree plan. If the retiring employee opts for the alternative coverage and declines COBRA coverage, then she or he is no longer eligible for COBRA.

(...continued)

Voluntary reasons include retirement, resignation, and failure to return to work after a leave of absence. Involuntary reasons include layoffs, firings, and the employer's bankruptcy under Chapter 11 of Title 11 of the *U.S. Code*. Strikes and walkouts might also trigger COBRA coverage if they result in a loss of health insurance coverage.

- If the employer's retiree health plan satisfies COBRA's requirements for benefits, premium, and duration, the employer is not required to offer a COBRA option when the employee retires, and the coverage provided by the retiree plan can be counted against the maximum COBRA coverage period that applies to the retiree, spouse, and dependent children. If the employer terminates the plan before the maximum coverage period has expired, COBRA coverage must be offered for the remainder of the period.
- The only other access a retiree has to COBRA coverage is when a former employer terminates the retiree health plan under Chapter 11 bankruptcy reorganization. This option would be available only to those retirees who are receiving retiree health insurance. In this case, the coverage can continue until the death of the retiree. The retiree's spouse and dependent children may purchase COBRA coverage from the former employer for 36 months after the retiree's death.

The Nature of COBRA Coverage

The continuation coverage must be identical to that provided to "similarly situated non-COBRA beneficiaries." The term *similarly situated* is intended to ensure that beneficiaries have access to the same options as those who have not experienced a qualifying event. For example, if the employer offers an open season for non-COBRA beneficiaries to change their health plan coverage, the COBRA beneficiary must also be able to take advantage of the open season. By the same token, COBRA continuation coverage can be terminated if an employer terminates health insurance coverage for all employees.

Duration of Coverage

The duration of COBRA coverage can vary, depending on the qualifying event.

- In general, when a covered employee experiences a termination or reduction in hours of employment, the continued coverage for the employee and the employee's spouse and dependent children may continue for 18 months.
- Retirees who lose retiree health insurance benefits, due to the bankruptcy (a reorganization under Chapter 11) of their former employer, may elect COBRA coverage that can continue until their death. The spouse and dependent children of the retiree may continue the coverage for an additional 36 months after the death of the retiree.
- For all the other qualifying events listed above (death of employee, divorce or legal separation from employee, employee becoming eligible for Medicare, the end of a child's dependent status under the parents' health policy), the coverage for the qualified beneficiaries may be continued for 36 months.

Different provisions apply to disabled individuals. If the Social Security Administration (SSA) makes a determination that the date of an individual's onset of disability occurred during the first 60 days of COBRA coverage or earlier,⁷ the employee and the employee's spouse and dependents

⁷ In most cases, the SSA makes its disability determination after the first 60 days of COBRA coverage. However, the (continued...)

are eligible for an additional 11 months of continuation coverage. This is a total of 29 months from the date of the qualifying event (which must have been a termination or reduction in hours of employment). This provision was designed to provide a source of coverage while individuals wait for Medicare coverage to begin. After a determination of disability, there is a five-month waiting period for Social Security disability cash benefits and another 24-month waiting period for Medicare benefits. See the section below regarding the premium for this additional 11 months.

Under some conditions, COBRA coverage can end earlier than the full term. Although coverage must begin on the date of the qualifying event, it can end on the earliest of the following:

- the first day for which timely payment of the premium is not made (payment is timely if it is made within 30 days of the payment due date and payment cannot be required before 45 days after the date of election (see below));
- the date on which the employer ceases to maintain any group health plan;⁸
- the first day after the qualified beneficiary becomes actually covered (and not just eligible to be covered) under another employer's group health plan, unless the new plan excludes coverage for a preexisting condition;⁹ or
- the date the qualified beneficiary is entitled to Medicare benefits, if this condition is specified in the group health plan.

If a COBRA-covered beneficiary receiving coverage through a region-specific plan (such as a managed care organization) moves out of that area, the employer is required to provide coverage in the new area if this can be done under one of the employer's existing plans. For example, if the employer's plan is through an insurer licensed in the new area to provide the same coverage available to the employer's similarly situated non-COBRA employees. Further, if this same coverage would not be available in the new area, but the employer maintains another plan for employees who are not similarly situated to the beneficiary (such as a plan offered to management or another group within the firm) that would be available in the new area, then that alternative coverage must be offered to the beneficiary. If, however, the only coverage offered by the employer is not available in the new area, the employer is not obliged to offer any other coverage to the relocating beneficiary.

(...continued)

date of the disability onset can be set retroactively to a date within the first 60 days.

⁸ A bankruptcy under Chapter 7 of Title 11 of the *U.S. Code* would be such an instance. Chapter 7 bankruptcies (business liquidations) are distinct from Chapter 11 (reorganization) bankruptcies. Under Chapter 7, the employer goes out of existence. COBRA is provided through the employer; if there is no employer, there is no COBRA obligation. Under Chapter 11, the employer remains in business and must therefore honor its COBRA obligations.

⁹ Under the Health Insurance Portability and Accountability Act (P.L. 104-191), the new health plan cannot impose a pre-existing condition limitation or exclusion longer than 12 months after the enrollment date. The new group plan must reduce the pre-existing condition limitation period by one month for every month the individual had creditable coverage under the previous plan or COBRA. If the individual has not had 12 months of such creditable coverage, the new plan can impose an appropriate limitation period. In this case, the individual may maintain COBRA coverage under the former employer's plan.

COBRA Coverage and Medicare

COBRA coverage varies for Medicare beneficiaries depending on whether they become eligible for COBRA before or after they become eligible for Medicare. Medicare law requires that certain employers (those with 20 or more employees) provide their employees who are Medicare beneficiaries with the same coverage offered to their other employees. This includes family coverage, if it is offered.¹⁰

If a working Medicare beneficiary experiences a qualifying event (e.g., retirement, job termination), he or she becomes eligible for 18 months of COBRA coverage from the date of the qualifying event. If the beneficiary's family members lose coverage because of the qualifying event, they would be eligible for COBRA coverage for up to 36 months *from the date on which the employee became eligible for Medicare*. For example, if an employee becomes eligible for Medicare in January 2013 and then retires 12 months later in January 2014, the covered family members would be eligible for 24 months of COBRA coverage, rather than 36 months. However, no matter when the second qualifying event occurs, COBRA coverage for qualified family members can never be less than 18 months.

On the other hand, if an individual is receiving COBRA benefits and becomes eligible for Medicare during the 18 month period, COBRA coverage can be terminated early (see above, under "Duration of Coverage"). In this case, the individual's covered family members can continue their COBRA coverage for up to 36 months from the date of the original qualifying event.

Notice Requirements

Employers, employees, and the employer's health plan administrators all have to meet requirements for notifying each other regarding COBRA.

- At the time an employee first becomes covered under a health plan, the plan administrator must provide written notification to the employee and his or her spouse regarding COBRA rights if a qualifying event should occur.

If a qualifying event occurs, other notices are required.

- The employer must notify the plan administrator of the event within 30 days of the death of the employee, a termination, or reduction in hours, the employee's becoming entitled to Medicare, or the beginning of bankruptcy proceedings.
- Within 14 days of receiving the employer's notice, the plan administrator must notify, in writing, each covered employee and his or her spouse of their right to elect continued coverage.

¹⁰ For more information on working Medicare beneficiaries, see Center for Medicare and Medicaid Services, *Medicare and Other Health Benefits: Your Guide to Who Pays First*, November 2011, at <http://www.medicare.gov/Pubs/pdf/02179.pdf>; U.S. Social Security Administration, *Medicare and COBRA*, at <http://www.socialsecurity.gov/disabilityresearch/wi/medicare.htm#cobra>; and U.S. Department of Labor, *Health Benefits Advisor: Eligible for Medicare*, at <http://www.dol.gov/elaws/ebsa/health/68.asp>.

- The employee must notify the employer or plan administrator within 60 days of a divorce or legal separation of a covered employee or a dependent child's ceasing to be a dependent of the covered employee under the policy.
- COBRA beneficiaries who are determined by the SSA to have been disabled within the first 60 days of COBRA coverage must notify the plan administrator of this determination to be eligible for the additional 11 months of coverage. They must provide this notice within 60 days of receiving the SSA's decision.

Election of Coverage

A qualified individual must choose whether to elect COBRA coverage within an election period. This period is 60 days from the later of two dates: the date coverage would be lost due to the qualifying event or the date that the beneficiary is sent notice of his right to elect COBRA coverage. The beneficiary must provide the employer or plan administrator with a formal notice of election. Coverage is retroactive to the date of the qualifying event. The employee or other affected person may also waive COBRA coverage. If that waiver is then revoked within the election period, COBRA coverage must still be provided. However, coverage begins on the date of the revocation rather than the date of the qualifying event. The Trade Act of 2002 (P.L. 107-210) provided a temporary extension of the election period for those individuals who qualified for the Health Coverage Tax Credit (HCTC). Under the provision, qualified individuals who did not elect COBRA coverage during the regular election period can elect continuation coverage within the first 60-day period beginning on the first day of the month when they were determined to have met the qualifications.¹¹

Paying for COBRA

Employers are not required to pay for the cost of COBRA coverage. They are permitted to charge the covered beneficiary 100% of the premium (both the portion paid by the employee and the portion paid by the employer, if any), plus an additional 2% administrative fee. For disabled individuals who qualify for an additional 11 months of COBRA coverage, the employer may charge 150% of the premium for these months. The plan must allow a qualified beneficiary to pay for the coverage in monthly installments, although alternative intervals may also be offered.

Conversion Option

Some states require insurers to offer group health plan beneficiaries the option of converting their group coverage to individual coverage. Conversion enables individuals to buy health insurance from the employer's plan without being subject to medical screening. Under the Health Insurance Portability and Accountability Act (HIPAA; P.L. 104-191), a person moving from the group to individual insurance market is guaranteed access to health insurance coverage either under federal requirements or an acceptable alternative state mechanism. The beneficiary must have exhausted all COBRA coverage before moving to the individual market. Although the policy must be issued, the premium might be higher than the premium under a group plan. Despite the higher premiums,

¹¹ For a further discussion of the HCTC, see CRS Report RL32620, *Health Coverage Tax Credit*, by Bernadette Fernandez.

the conversion option may be attractive to a person who would otherwise have difficulty obtaining health insurance because of a major illness or disability.

Penalties for Noncompliance

Private group health plans are subject to an IRS excise tax for each violation involving a COBRA beneficiary. In general, the tax is \$100 per day per beneficiary for each day of the period of noncompliance. ERISA also contains civil penalties of up to \$100 per day for failure to provide the employee with the required COBRA notifications. State and local plans covered under the Public Health Service Act are not subject to the same financial penalties provided under the tax code or ERISA. However, state and local employees have the right to bring an “action for appropriate equitable relief” if they are “aggrieved by the failure of a state, political subdivision, or agency or instrumentality thereof” to provide continuation health insurance coverage as required under the act.¹²

Issues

Cost Issues

COBRA was enacted to provide access to group health insurance for people who lose their employer-sponsored coverage, and thus to help reduce the number of uninsured. However, the law has limitations in its effectiveness in covering persons leaving the workforce and, from the point of view of both employees and employers, has costs that can be burdensome.

Many COBRA beneficiaries are concerned about the cost of COBRA coverage. A Kaiser study¹³ provides figures for the average premiums for employer-sponsored health insurance coverage. The average annual premium for employer-sponsored health insurance in 2012 was \$5,615 for single coverage and \$15,745 for family coverage. Covered-current employees contribute on average 18% of the premium for single coverage and 28% of the premium for family coverage. Under COBRA, former employees may be required to pay up to 102% of the premium. This can be a hardship for newly unemployed individuals.

Employers also express concerns about costs. Spencer & Associates, in its 2009 survey, reported that average claim costs for COBRA beneficiaries exceeded the average claim for an active employee by 53%. The average annual health insurance cost per active employee was \$7,190, and the COBRA cost was \$10,988.¹⁴ The Spencer & Associates analysts contend that this indicates that the COBRA population is sicker than active-covered employees and that the 2% administrative fee allowed in the law is insufficient to offset the difference in actual claims costs.

¹² Public Health Service Act: 42 U.S.C. §300bb–1. State and local governmental group health plans must provide continuation coverage to certain individuals. See <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap6A-subchapXX.pdf>.

¹³ Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits, 2012 Annual Survey*, September 2012, at <http://ehbs.kff.org/pdf/2012/8345.pdf>.

¹⁴ “2009 COBRA Survey: Recession Takes Hold: More Were Eligible, Fewer Elected, Costs Stay High,” *Benefits News*, Commerce Clearing House, June 12, 2009.

It could be that the monthly expense of COBRA benefits contributes to “adverse selection” among the pool of potential beneficiaries. Healthy individuals may decide against COBRA benefits, while sicker individuals, anticipating medical expenses that would exceed the monthly premium, opt in.¹⁵

COBRA and the Affordable Care Act

The Affordable Care Act (ACA) did not eliminate COBRA, and it made no direct changes to COBRA benefits.¹⁶ However, effective in 2014, ACA enacts health insurance reforms, establishment of newly established health insurance exchanges, and premium credits for certain individuals.

When the newly established health insurance exchanges are operational in 2014, it is expected that higher-quality health insurance will be available to uninsured individuals for purchase. If that is the case, will COBRA benefits still be relevant, or will the newly unemployed prefer to purchase policies on the exchange?

How the ACA provisions will impact demand for COBRA coverage may vary by individual. In the absence of premium credits, some young and healthy individuals may find COBRA coverage more affordable than coverage in the exchange, whereas the opposite might occur for older workers. In addition, access to premium credits for individuals with income up to 400% of the federal poverty level may improve affordability of coverage.

Employers, health care policy groups, and benefit advisors see an ongoing role for COBRA. They expect that employees will see value in continuing their employer benefits, despite the cost:

- COBRA will still provide a ready bridge for those who expect to be re-employed with new health benefits.
- People with pre-existing conditions and a network of health care providers may feel better served by their COBRA coverage.
- The Affordable Care Act requires employers to provide “Summaries of Benefits and Coverage” to their employees. This will make it easier for employees to compare their health benefits under COBRA with the other options available to them.
- The status of the exchanges and the quality/cost of the products sold on the exchanges are still unknown.¹⁷

¹⁵ For more information on “adverse selection,” see CRS Report RL32237, *Health Insurance: A Primer*, by Bernadette Fernandez.

¹⁶ Employee Benefits Security Administration, Department of Labor, *Health Care Reform And COBRA*, at <http://www.dol.gov/ebsa/faqs/faq-healthcarereform.html>.

¹⁷ Ceridian Corporation, *COBRA: Still Relevant, And Even More Complex After Health Care Reform*, 2012, at http://www.ceridian.com/www/content/10/12487/17395/20120208_featured_article.pdf. The Commonwealth Fund, *Policies to Protect the Unemployed from Becoming Uninsured*, Commonwealth Fund Blog, August 24, 2011, at <http://www.commonwealthfund.org/Blog/2011/Aug/Policies-to-Protect-the-Unemployed.aspx>. Society for Human Resource Management, *National Health Care Reform Is Here—What It Means for COBRA Compliance*, May 2010, at <http://www.shrm.org/LegalIssues/FederalResources/Pages/ReformCOBRA.aspx>.

Number of Beneficiaries and Duration of Coverage

Statistical data on COBRA beneficiaries are sparse; however, some data are collected. The Medical Expenditure Panel Survey, Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, provides an annual estimate of COBRA beneficiaries based on survey data:¹⁸

- 2011: 2,616,000
- 2010: 3,443,000
- 2009: 3,190,000
- 2008: 2,832,000

Charles D. Spencer & Associates,¹⁹ a company that provides employee benefits analysis, surveyed 120 employers who subscribe to its service regarding COBRA, capturing information on the 2008 plan year for about 1.6 million workers. Its 2009 COBRA survey found that less than 10% of those who were eligible for COBRA benefits elected to take them, down significantly from the 2006 survey that showed about 27% of those eligible elected coverage. Average length of COBRA coverage was the lowest since the survey started in 1994. The average beneficiary under an 18-month qualifying event kept COBRA coverage for 7.5 months, down from 8.3 months in 2006 and 10.1 months in 1999. The average beneficiary under a 36-month qualifying event kept coverage for 14.2 months, down from 16.6 months in 2006 and 23.4 months in 1999.²⁰

Coverage Issues

COBRA is a method for retaining health insurance coverage, but many workers are excluded:

- Individuals who declined their employer-sponsored benefits do not qualify for COBRA.
- Workers who did not qualify for their employer-sponsored benefits, hourly and seasonal employees for example, do not qualify for COBRA benefits.
- The small employer exception exempts employers with fewer than 20 employees from providing COBRA coverage.
- COBRA coverage is not extended to individuals who work for an employer, regardless of size, that does not offer group health insurance.
- COBRA does not provide for continuation of coverage for family members unless an employer offers a family option.

¹⁸ Medical Expenditure Panel Survey, Agency for Healthcare Research and Quality, National totals for enrollees and cost of hospitalization and physician service health plans for the private sector and ...Government Sector, http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_4/2011/tiva1.pdf and http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_4/2011/tivb1.pdf.

¹⁹ Charles D. Spencer & Associates, Inc. surveys its subscribers; because this survey does not represent a random sampling of employers, it is not known whether its findings are representative of all employers in the United States.

²⁰ Commerce Clearing House, "2009 COBRA Survey: Recession Takes Hold: More Were Eligible, Fewer Elected, Costs Stay High," *Benefits News*, June 12, 2009.

- If an employer declares bankruptcy under Chapter 7 or simply discontinues operation, COBRA is not an option for employees who might otherwise have been eligible for COBRA benefits.

In 2009, The Commonwealth Fund estimated that about 66% of currently working Americans, or about 79 million workers, would qualify for COBRA benefits if they became unemployed.²¹

Employer Size

Currently, COBRA provides an exception for employers with fewer than 20 employees. According to the Census Bureau's *Statistics of U.S. Business*, in 2010, approximately 5.2 million firms employed 20.5 million people, or about 18% of employees covered in the survey. These workers would not be covered by COBRA because their employer had fewer than 20 employees at that firm.²² According to The Commonwealth Fund, in 2007, 5% of insured adults aged 19 to 64 were ineligible for COBRA because their employer-sponsored insurance was provided through a firm with fewer than 20 employees.²³ Forty states and the District of Columbia have attempted to address this issue through "mini-COBRA" laws, which require that continuation coverage be offered to employees in smaller firms.²⁴ However, in some states, the continuation coverage may be offered for a shorter period or provide fewer benefits than federal COBRA law requires.

Retirees

Almost all Americans over the age of 65 qualify for Medicare—the federal health insurance program for the elderly. But many people retire before age 65. In 2012, the Social Security Administration reported that nearly 60% of Social Security beneficiaries retired before the age of 65.²⁵ These retirees, separated from employment, are often separated from their former source of health insurance.

Some retirees obtain health insurance coverage through retiree plans offered by their former employers, but the number of employers who offer retiree plans has been falling. In 2008, 22% of workers were employed at a private establishment that offered health benefits to early retirees, down from 31% in 1997, and 17% of workers were employed at a private establishment that offered health benefits to Medicare-eligible retirees, down from 28% in 1997.²⁶ The 2010 Kaiser

²¹ The Commonwealth Fund, *Maintaining Health Insurance During a Recession: Likely COBRA Eligibility*, 2009, at http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Jan/Maintaining%20Health%20Insurance%20During%20a%20Recession%20%20Likely%20COBRA%20Eligibility/Doty_maintaininghltinsrecessionCOBRA_1225_ib%20pdf.pdf.

²² U.S. Census Bureau, "Statistics of U.S. Business," at <http://www.census.gov/econ/susb/data/susb2010.html>.

²³ The Commonwealth Fund, *Maintaining Health Insurance During a Recession: Likely COBRA Eligibility*, 2009, at http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Jan/Maintaining%20Health%20Insurance%20During%20a%20Recession%20%20Likely%20COBRA%20Eligibility/Doty_maintaininghltinsrecessionCOBRA_1225_ib%20pdf.pdf.

²⁴ National Conference of State Legislatures, *State COBRA Expansions for Small Businesses*, October 2009, at <http://www.ncsl.org/IssuesResearch/Health/StateCOBRAExpansionsforSmallBusinesses/tabid/16795/Default.aspx>.

²⁵ Social Security Administration, "2012 Annual Statistical Supplement," Table 6.A4, at <http://www.ssa.gov/policy/docs/statcomps/supplement/2012/6a.html#table6.a4>.

²⁶ Employee Benefits Research Institute, *Implications of Health Reform for Retiree Health Benefits*, July 2010, at http://www.ebri.org/pdf/briefspdf/EBRI_IB_01-2010_No338_RetHlth1.pdf.

annual employer survey reported that the percentage of employers with 200+ employees who offered retiree health benefits had dropped from 66% in 1988 to 28% in 2010. Small firms are even less likely to offer such coverage: 3% of firms with 3 to 199 workers offered retiree plans in 2010.²⁷

For retirees who are under the age of 65, and the near-elderly, those aged 55 to 65, separated from employment, COBRA coverage can be an important source of health insurance: the 18 months of COBRA benefits provide a bridge to Medicare for those who are close to the age of 65. When COBRA benefits run out, the near-elderly can have unique problems finding health insurance coverage on the individual market.²⁸

Recent Legislation

Currently, there is no legislation in the 113th Congress to amend COBRA. In the 112th Congress, legislation to extend COBRA coverage to additional people, domestic partners for example, or expand COBRA coverage, to span the time between retirement and Medicare eligibility for example, was introduced, but no major action was taken.

Throughout 2008-2009, the unemployment rate in the United States climbed from 5% to a peak of 10% in October 2009. A slow recovery was predicted and many who lost their jobs anticipated a long period of being either underemployed or unemployed. As a result, many who were eligible to continue their employer-sponsored health insurance did not elect coverage under COBRA, leaving their families at risk.

The 111th Congress addressed this problem by creating a temporary COBRA premium subsidy under Title III of the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). The subsidy was limited to 15 months and covered 65% of the COBRA premium. The individuals had to pay the remaining balance. This provision has since expired. The COBRA subsidy, as amended by subsequent laws, was available to individuals who met the income test and who were involuntarily terminated on or after September 1, 2008, and before June 1, 2010.

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²⁷ Kaiser Family Foundation and Health Research and Employee Trust, *Employer Health Benefits 2010 Annual Survey: Retiree Health Benefits*, 2010, at http://ehbs.kff.org/pdf/2010/8085-Section_11.pdf.

²⁸ For more information, see Kaiser Family Foundation, *Cost and Access Challenges: A Comparison of Experiences Between Uninsured and Privately Insured Adults Aged 55 to 64 with Seniors on Medicare*, May, 2012, at <http://www.kff.org/medicare/8320.cfm> and National Association of Insurance Commissioners, *Early Retirement Health Insurance Options: Bridging a Coverage Gap Between Retirement and Medicare*, January 2012, at http://www.naic.org/documents/consumer_alert_early_retirement_health_insurance_options.htm.