

# COBRA for Employers

December 20, 2012



# COBRA for Employers

- Welcome! We will begin at 1 p.m. Eastern
- There will be no sound until we begin the webinar. You can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your invitation email
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# COBRA for Employers

Assurex Global Shareholders · December 20, 2012

- Catto & Catto
- The Crichton Group
- Engle-Hambright & Davies
- Frenkel Benefits
- The Horton Group
- Kinney Pike Insurance
- LMC Insurance & Risk Management
- Lipscomb & Pitts Insurance
- The McCart Group
- MJ Insurance
- Parker, Smith & Feek
- Payne Financial Group
- R&R/The Knowledge Brokers
- RCM&D
- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Van Gilder Insurance
- Woodruff-Sawyer & Co.
- John L. Wortham & Son



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# COBRA After 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# COBRA After Health Reform

- ACA Elements That May Reduce the Need for COBRA
  - Individual health insurance rules
    - No medical underwriting – No pre-existing limitation
  - Subsidies for low and middle income individuals purchasing individual coverage on exchange
    - May make exchange coverage cheaper than employers COBRA plan for those who qualify - especially lower income individuals



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# COBRA After Health Reform

- ACA Elements 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 exchange
  - Individual mandate will impose tax on those without insurance
    - COBRA may be best option for some to avoid tax
  - Individual health insurance rates may go up
    - Employer COBRA plan may still be cheapest option for some – especially those who do not qualify for ACA subsidies



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Review

## ■ COBRA Review

- Employers Subject to COBRA
  - “...a small employer plan is a group health plan maintained by an employer... that normally employed fewer than 20 employees...during the preceding calendar year.”
    - Count part time employees on a pro-rata basis
    - Count employees even if they carry no benefits



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Review

- COBRA Review (cont'd)

- State Continuation Laws
  - 37 states have state-specific continuation rules
  - Apply only to fully insured plans
  - Apply based on where the plan is issued, not where the employee lives
  - Often apply to employers with fewer than 20 employees
  - In some states employers with more than 20 employees must follow both COBRA and state continuation law



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.



# Plans Subject to COBRA

- Plans Subject to COBRA
  - Medical plans, including Health Reimbursement Accounts (HRAs)
  - Dental, Vision, Rx
  - On-site health care and EAPs
  - Health Flexible Spending Accounts
- Plans not subject to COBRA
  - Life insurance, disability, Long Term Care, HSA account (however HDHP associated with HSA is subject to COBRA)



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Plans Subject to COBRA

## ■ Section 125 Health Flexible Spending Accounts

- Spouse and dependent can elect independently to participate in FSA
- Part-time employees may be eligible for FSA
- Must offer if benefit available is greater than premium for remainder of year
- Example:

		Benefit Available
1/1/01	Employee Elects HFSA deductions of \$2400	\$2400
2/1/01	Employee submits \$400 claim	\$2000
6/30/01	Employee Quits – Benefit still available	<b>\$2000</b>
	Premium for remainder of plan year	<b>\$1200</b>
	<b>Plan Must Offer COBRA</b>	



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Plans Subject to COBRA

- Employee Assistance Plans (EAP)
  - 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Plans Subject to COBRA

## ■ Health Reimbursement Accounts

- 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Qualified Beneficiaries

- Qualified Beneficiaries (QB)
  - Employee, spouse or child covered the day before 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Qualifying Events

- Definition
  - One of the events listed in the law and will cause the loss of coverage now or at some time in the future
- 18-Month Events for Employee, Spouse or Child
  - Termination
  - 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Events

## ■ 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

## ■ 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.



# DOL Final Notice Rules

- Effective Date
  - Plan years beginning after 11/25/04
- Major Areas of the New Rules
  - Initial notice timing and delivery
  - Employer notice to administrator
  - Employee and beneficiary notice to employer requirements
  - New election notice requirements
  - Two new notices



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Initial General Notice

- 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.”
  - Notice to the spouse
    - Spouses added to plan after employees initial enrollment
  - Notice directly to minor children not required unless they live at different address from employee
  - 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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:
  - [http://www.dol.gov/ebsa/compliance\\_assistance.html](http://www.dol.gov/ebsa/compliance_assistance.html)



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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
  - Employer must establish “reasonable procedures”
  - Employer may require written notice
    - If employer fails to implement procedures, employee or beneficiary can notify verbally



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Qualifying Event Election Notice Rules

- 14 Specific Content Requirements in Regulations
  - (i) The name of the plan ...the name, address and telephone number of the party responsible ...;
  - (ii) Identification of the qualifying event;
  - (iii) Identification of each qualified beneficiary ..., and the date on which coverage under the plan will terminate (or has terminated) ;
  - (iv) A statement that each individual who is a qualified beneficiary ...has an independent right to elect continuation coverage,...
  - (v) An explanation of the plan's procedures for electing continuation coverage ...



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Qualifying Event Election Notice Rules

- 14 Specific Content Requirements in Regulations (cont'd)
  - (x) ...a description of the plan's requirements regarding the responsibility of qualified beneficiaries to provide notice of a second qualifying event and notice of a disability determination under the SSA,...
  - (xii) A description of the due dates for payments, the qualified beneficiary's right to pay on a monthly basis, the grace periods for payment, ...



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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
- DOL Model Notice Available in both English and Spanish at:
  - [http://www.dol.gov/ebsa/compliance\\_assistance.html](http://www.dol.gov/ebsa/compliance_assistance.html)



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# Other COBRA Notices

- Notice of Unavailability of Continuation Coverage
  - Required if EE/QB notifies employer of divorce/separation, dependent ineligibility, disability or a second event
  - Notice must be sent within 14 days
- 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”



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.



# 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
  - This rate by definition is typically a percentage above actual expected costs



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# 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
  - Enrolled in Medicare after COBRA is elected
    - If an individual enrolls in Medicare and then has a COBRA event they must be offered COBRA



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# FMLA

- FMLA Applies To Employer With 50 Or More Employees
- FMLA Leave is Not a COBRA Event
- COBRA Starts at the End of the Individual FMLA Eligibility if an Individual Fails to Return from FMLA
  - Even if employee drops health insurance during FMLA leave, COBRA not offered until end of FMLA
  - It is possible for there to be a break in coverage if the individual lets coverage lapse during FMLA leave



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.

# COBRA for Employers

Assurex Global Shareholders · December 20, 2012

- Catto & Catto
- The Crichton Group
- Engle-Hambright & Davies
- Frenkel Benefits
- The Horton Group
- Kinney Pike Insurance
- LMC Insurance & Risk Management
- Lipscomb & Pitts Insurance
- The McCart Group
- MJ Insurance
- Parker, Smith & Feek
- Payne Financial Group
- R&R/The Knowledge Brokers
- RCM&D
- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Van Gilder Insurance
- Woodruff-Sawyer & Co.
- John L. Wortham & Son

*Thank you!*



**Audio trouble? Dial 1-719-867-1571 Access Code 265313**  
Copies of this presentation are available through your benefits advisor.