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Effective September 1, 2003 California Law Will Require Insurers and HMOs under Group Medical Plans to Extend Coverage for Individuals Who Have Exhausted COBRA, Potentially Doubling the Normal 18 Month COBRA Period.

CALIFORNIA EXTENDS COBRA CONTINUATION PERIOD

By Nancy L. Ober and GJ Stillson MacDonnell

Effective September 1, 2003, a new California law will require that employees and their covered dependents who have exhausted their federal COBRA medical benefits be given the opportunity to extend their coverage to a maximum of 36 months. The new law, AB 1401, will enable individuals who lose coverage due to termination of employment to continue coverage for the same period that COBRA allows for dependents who lose coverage due to divorce, death, or loss of dependent status.

WHICH PLANS ARE AFFECTED

The extension applies only to group medical plans that provide benefits through insurance or a health care service plan (HMO). The obligation to offer extended coverage falls on the health insurance issuer or the HMO, not on the sponsoring employer. The extension does not apply to self-insured plans, where the employer pays benefits out of its general assets or a trust. Specialized HMOs or insurance plans that provide "non-core" coverage, such as stand-alone dental or vision plans or policies, are also excluded.

WHO IS ELIGIBLE

To be eligible, the employee or dependent must have begun receiving federal COBRA benefits on or after January 1, 2003 and must have exhausted federal COBRA. The employee and the employee's spouse or dependent may each independently elect the extended coverage. However, spouses and dependent children who were previously offered 36

months of federal COBRA coverage are not eligible for further coverage.

MAXIMUM EXTENSION

The extension is for a maximum of 36 months from the date the individual's federal COBRA benefits began. Thus, the extension doubles the 18-month maximum COBRA period that normally applies to individuals losing health coverage due to termination of employment or reduction of hours.

Coverage during the extension period must be continued under the same terms and conditions that apply to similarly situated non-COBRA individuals under the group health plan. The insurer or HMO may charge a premium not to exceed 110% (rather than the federal COBRA 102%) of the premium for similarly situated non-COBRA (active) employees or dependents. Individuals who are disabled under Social Security may be charged 150% of the group rate.

SMALL PLANS EXTENSION UNDER CAL-COBRA

AB 1401 also requires HMOs and insurers of small plans below the 20-employee federal COBRA threshold to offer continuation coverage. The coverage period for employees and covered dependents who lose coverage due to termination of employment or reduction in hours is extended to 36 months.

STATE REGULATION OF GROUP
HEALTH PLANS

AB 1401 regulates both small and federal COBRA-covered medical plans indirectly through regulation of the plan's insurers and HMOs. Extended coverage imposes administrative responsibilities on the insurer and HMO, but not directly on the plan unless the employer/plan administrator and the insurer or HMO contractually agree otherwise. The insurance issuer or HMO must notify COBRA recipients of the opportunity to extend coverage at the same time that the insurer or HMO is required to notify the recipient of the COBRA termination date and any right to convert to an individual policy. California law specifies that that date is within 180 days before the COBRA termination date. The employer/plan administrator is only obligated to give the notice if it has contracted with the insurance issuer or HMO to do so. The law does not require either the plan or the employer to advise covered persons regarding the details of AB 1401.

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RECOMMENDATIONS

Employers should review their insurance or HMO contracts to verify which party is responsible for giving notice of the coverage extension. Even if the employer has not assumed such responsibility, we recommend that the employer communicate with the insurer or HMO to confirm that it will provide notice of the extension to eligible COBRA recipients. We also recommend that employers with insured plans or HMOs add appropriate language to their plan's COBRA/Cal-COBRA notices and summary plan description advising California employees of this permitted extension.

