

Compliance Corner: Who Does What?

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COBRA is an employer law – it is the employer’s responsibility to have their Plan in compliance – they either do everything themselves or outsource activities to an administrator. Employers need to confirm exactly what they have outsourced – who should do what? Obviously, activities should be confirmed in the service agreement. But, it is not just sending the letters – or collecting the premium. A critical area that often falls into the “I thought YOU did that!” arena is communicating COBRA and election to the carrier - and/or payments received.

It is the reality of the famous poem – “Anybody could have done what Somebody should have done; but, Nobody did, so Everybody got in trouble!”

Recent court cases still reflect the need for the employer to confirm “Who does What?”

*Linden v Harding Tube Corp., 2005 US District
LEXIS 21574, E. D. Michigan – 2005*

A qualified beneficiary elected and made a payment for COBRA coverage under his former employer’s health plan. He did not receive

More Health Insurance Hurdles for Americans in 2007

PR Newswire

2007 will bring significant changes in health insurance benefits for employees and their families. Employers are implementing benefit options with large deductibles and health savings account options as a way to reduce their costs. Meantime, families are faced with lots of questions:

- Should I choose a low-premium plan, which means higher co-payments?
- If I choose a high-deductible plan coupled with a health savings account, do I fund it with pre-tax dollars, which will decrease my monthly paycheck?
- Will I get a better deal if I get coverage through my spouse's company rather than my own?

Making the right choice is crucial, because the option one chooses is in effect for a year. But employers may not know the pros and cons well enough to help their employees choose the best options. Patient Care, a national advocacy company (<http://www.patientcare4u.com>),

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COBRA coverage, however, because the insurer never received the premium payment and no one notified the insurer that it should provide COBRA coverage to the qualified beneficiary.

When the qualified beneficiary sued, the former employer argued that the company it had hired to administer COBRA was responsible for the failure to provide COBRA coverage. The COBRA administrator doesn't provide the coverage – the carrier does that.

There was never any dispute that the COBRA administrator received the qualified beneficiary's election and initial payment within the allowable timelines established by the law. Furthermore, the COBRA administrator followed the terms of its contract with the employer by forwarding the payment to the employer.

However, the employer stated that they never received the payment and that is why they never informed the carrier to reactivate the coverage. The "I thought YOU did that!" finger pointing resulted in the employer and the COBRA administrator adding claims against one another to the qualified beneficiary's lawsuit. The court issued this decision after the parties asked the court to decide their claims without a trial.

The court concluded that there was "no dispute that the regulations were violated." Either the employer or the COBRA administrator had failed to take the actions necessary to activate the



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helps employers and their employees understand their choices and make them wisely.

In 2006, employers became much more pro-active in implementing requirements for employees and their families related to health and wellness, enacting some new strategies:

- More testing – Requiring employees and their spouses take a health risk assessment that includes a complete set of lab testing. Those employees who do not comply are automatically enrolled in the high deductible plan.
- Smokers pay more – Increasing premiums for any employee or spouse who smokes. Smokers are likely to incur higher healthcare costs. Increasing premiums mean that they pay more of the costs because of their behavior.
- Charge more if options exist – Charging employees an additional premium if the employee covers their spouse when the spouse has coverage available through their employer.
- Health Savings Accounts – Replacing all benefit options with a high deductible plan with a Health Savings Account option. A health savings account allows the participant to put aside money out of their paycheck pre tax which accrues and which belongs to the employee, not to their

employer. This money can be used at any time to pay for healthcare expenses.

"Unfortunately, Americans are having to bear the brunt of rising medical costs," said Jane Cooper, CEO of national healthcare advocacy company Patient Care. "Employers are faced with having to provide health insurance that is affordable for both the employee and the employer. It results in reduced healthcare coverage at an increased premium."

Patient Care is a patient advocacy firm that helps its members navigate the health insurance maze by working to resolve their issues and provide information and assistance. The service is available to employer groups and individuals. With offices in Milwaukee and New Orleans, Patient Care serves over 140,000 members throughout the United States. For more information on Patient Care, visit <http://www.patientcare4u.com>. 

Available Topic Expert(s): For information on the listed expert(s), click appropriate link. Jane Cooper <http://profnetwork.com/Subscriber/ExpertProfile.aspx?ei=34934>

SOURCE Patient Care

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Flexible Spending Account Cards Accepted at all Wal-Mart and Sam's Club Locations

Life Science Weekly

Wal-Mart Stores, Inc. (WMT) has launched a unique technology solution to make it easier for Wal-Mart customers to use flexible spending account (FSA) debit cards at any Wal-Mart and Sam's Club to pay for healthcare or dependent care merchandise and expenses that are approved for reimbursement as part of a FSA benefit plan.

Wal-Mart's Inventory Information Approval System (IIAS) will allow customers to pay for FSA eligible healthcare merchandise with their FSA debit card. The IIAS solution works by automatically identifying FSA eligible merchandise, which have a unique identifying number, as items are scanned during the checkout process. Once all items have been scanned, a total is displayed for the entire transaction showing both FSA and non-FSA merchandise. If the customer wishes to use an FSA card for payment of FSA eligible merchandise, they can simply swipe their card at the debit reader and then pay for the non-FSA merchandise with another form of payment.

"The system will be seamless for customers," said Alberto L. Dominguez, director of third party administration for Wal-Mart Pharmacy, "because it maintains a list of approved healthcare merchandise so customers will no

longer have to separate merchandise at checkout or wonder what is eligible for payment with an FSA card."

Consumers can use their FSA on a wide range of eligible merchandise and expenses that are available at Wal-Mart and Sam's Clubs locations from prescription glasses to over-the-counter cold, flu and allergy products, Dominguez said.

An FSA is an employer-sponsored benefit plan that allows employees to voluntarily withhold a portion of their paycheck to pay for approved healthcare expenses on a pre-tax basis. 🚫

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qualified beneficiary's COBRA coverage with the carrier. The court held that the employer, as the plan sponsor and plan administrator, was "initially" liable to the qualified beneficiary for the violations. The court awarded the qualified beneficiary \$62,923.45, which was the amount of the medical expenses that the insurer would have paid if COBRA coverage had been in place.

As far as the claims of the employer and the COBRA administrator, the court refused to enter judgment for either of them, holding instead that a trial would be necessary to resolve whether the COBRA administrator had in fact forwarded the qualified beneficiary's payment to the employer.

Many carriers will not accept eligibility information from a third party – no one else - the contract is with the employer and it is the employer's responsibility to confirm who is eligible to be on the plan.

But in this situation, the service agreement with the COBRA administrator did not include the responsibility of carrier notification. This employer learned the hard way, "Who does what?" 🤖

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