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Health Insurance Continuation Coverage Under COBRA

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Summary

Most Americans with private group health insurance are covered through an employer. That coverage is generally provided to active employees and their families. A change in an individual's work or family status can result in loss of coverage. In 1985, Congress enacted legislation to provide temporary access to health insurance for qualified individuals who lose coverage due to such changes. Under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272), an employer with 20 or more employees must provide those 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 coverage can last up to 36 months, depending on the nature of the triggering event. The employer is not required to pay for this coverage; instead, the beneficiary can be required to pay up to 102% of the premium. Employers who fail to provide the continued health insurance option are subject to tax and other penalties.

In 1987, the Internal Revenue Service issued proposed regulations providing guidance for employers on COBRA. The regulations were finalized in February 1999 and January 2001.

Some believe that COBRA went too far in requiring employers to provide continuation coverage. They argue that it resulted in extra costs for employers (in the form of increased premiums for employers' group health insurance policies) as well as added administrative burdens. In contrast, others believe that COBRA should be expanded to include new eligibility categories and longer coverage periods, so that more workers and their families have a source of group health insurance coverage during periods of job or family transitions. They argue that the financial and administrative burdens on employers have been exaggerated.

The Trade Act of 2002 provided a tax credit for the purchase of health insurance (including COBRA coverage) for workers displaced by trade. A number of other legislative proposals were introduced in the 107th Congress. Provisions in the House-passed economic stimulus legislation would have allowed states to use block grant funds to assist with the purchase of insurance coverage (including COBRA) for workers displaced by the terrorist attacks of September 11, 2001. Other legislation would have subsidized COBRA premiums for workers who lost health coverage as a result of the terrorist attacks, extended COBRA benefits to retirees whose former employer eliminates or substantially reduces their retiree health insurance, and provided tax credits for individuals for the costs of COBRA premiums. These bills were not enacted.

This report provides background information on COBRA, on the COBRA population, and on legislation affecting COBRA. It will be updated as events warrant.

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Background

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 much less expensive than 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 through the law authorizing the Federal Employees Health Benefits program under Title V 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 are regulated at the federal level under ERISA. Health insurance coverage for these affected workers and their families was not consistently available.

COBRA Coverage

General Requirements

Under COBRA, employers 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 need only maintain such a plan to come under the statute's continuation requirements.[1]

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 government. Although they are not covered under COBRA, since 1990, federal employees have been entitled to continued coverage under the Federal Employees Health Benefits Program.

Qualified Beneficiaries

In general, a qualified beneficiary is

- an employee covered under the group health plan who loses coverage due to termination of employment[2] or a reduction in hours;
- a retiree who loses retiree health insurance benefits due to the former employer's bankruptcy;
- 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.

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[1] On Feb. 3, 1999, the Internal Revenue Service (IRS) published final rules (64 *Federal Register* 5160-5188), effective on Jan. 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 Jan. 10, 2001 (66 *Federal Register* 1843-1859).

[2] A termination of employment (for reasons other than the employee's gross misconduct) can be either voluntary or involuntary. 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 XI of the U.S. Code. Strikes and walkouts might also trigger COBRA coverage if they result in a loss of health insurance 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 experiences a reduction in hours that results in a loss of health insurance benefits, this is a qualifying event. Or, if an employer requires retiring individuals to pay a higher premium for the same coverage they received immediately before retiring, the retirement can be a qualifying event even though coverage is not lost or benefits reduced. Events that trigger COBRA continuation coverage include:

- termination or reduction in hours of employment (for reasons other than gross misconduct).

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.

In addition, retirees and their covered dependents who lose coverage under their former employer's retiree health plan as a result of the employer's declaring bankruptcy under Chapter 11 are qualified for COBRA continuation coverage.

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 must 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's becoming eligible for Medicare, the end of a child's dependent status under the parents' health policy), the coverage for the qualified beneficiaries must 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,[3] the employee and the employee's spouse and dependents 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 5-month waiting period for Social Security disability cash benefits and another 24-month waiting period for Medicare benefits. See "Paying for COBRA" 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. 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;[4]

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[3] In most cases, the SSA makes its disability determination later than within the first 60 days of COBRA coverage. However, the date of the disability onset can be set retroactively to a date within the first 60 days.

[4] A bankruptcy under Chapter 7 of Title XI 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 his COBRA (continued...)

- 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;[5] or

- the date the qualified beneficiary is entitled to Medicare benefits.

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, this might be possible if the employer maintains a self-insured plan, or 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.

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.

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[4] (...continued)
obligations.

[5] 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.

- 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.

- 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 in order to be eligible for the additional 11 months of coverage. They must provide this notice within 60 days of receiving the SSA's decision.

Elections

A qualified individual must choose whether or not 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.

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

Many 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. Although the policy must be issued, the premium might be less appealing than the premium under a group plan. The beneficiary must have exhausted all COBRA coverage before moving to the individual market. Although the premiums for an individual policy are higher, 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 do 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.

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.

Coverage Issues

In a report released in October 1999,[6] the Kaiser Family Foundation provided a picture of the COBRA population. Kaiser estimated that 4.7 million individuals were enrolled in COBRA plans at any one time, representing approximately 7% of unemployed workers and 3% of all insured workers. The numbers were fairly equally divided among regions of the country and according to firm size. There were, on average, 4.8 COBRA beneficiaries per firm, although this number varied widely by industry, ranging from 2.6 beneficiaries per firm in the mining/construction industry to 10.6 in the finance industry. The largest group of COBRA beneficiaries (approximately 35%) was in service industries, probably reflecting the high turnover rate in that industry. Estimates of the average length of time that beneficiaries keep their COBRA coverage range from 4.8 months to 10.5 months (for 18-month eligibles) or 22.0 months (for 36-month eligibles). Approximately 20% of COBRA-eligible individuals actually elect coverage.

The universe of individuals covered by COBRA is limited in a number of ways. First, the small employer exception exempts employers with fewer than 20 employees from offering COBRA coverage. In addition, COBRA coverage is not extended to individuals who work for an employer, regardless of size, who does not

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[6] Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits 1999 Annual Survey* (Washington: Kaiser Family Foundation, 1999).

offer group health insurance. Nor is it available to an employee who declines coverage under an employer's plan. Also, if the employer declares bankruptcy under Chapter 7 or simply discontinues operation, COBRA is not an option for employees. The Kaiser Family Foundation estimates that in 1999 only 57% of workers and their adult dependents would have been eligible for COBRA if they had become unemployed.[7]

Employer Size. Currently, COBRA provides an exception for employers with fewer than 20 employees. Although 38 states require that continuation coverage be offered to employees in smaller firms, the coverage is not always as extensive as COBRA. According to figures from the Census Bureau's Statistics of U.S. Business, in 1998 approximately 20.3 million people, or 18.75% of employees covered in the survey, worked in firms with fewer than 20 employees.

One method proposed for increasing the number of those eligible for COBRA coverage would involve lowering the number of employees in the small employer exemption. According to the Census data, there were approximately 8 million people working in firms with 10 to 19 employees. If the definition of "small employer" was changed to "those having fewer than 10 employees," the employers of these 8 million workers would no longer be exempted from COBRA. However, such a proposal would likely be opposed by the small business community because it would result in potentially higher premium costs and added administrative burdens. Additionally, because the employee pool is small in these firms, the cost of covering COBRA individuals who use a lot of health care could result in raised premium costs for active employees in the long run.

Retirees. The Census Bureau estimates[8] that, in 2000, approximately 13.7% of people aged 55-64, many of whom are retirees, were uninsured. Many retirees obtain health insurance coverage through retiree plans offered by their former employers. However, the 2001 Kaiser annual employer survey reported that the percentage of employers who have 200 or more employees and who offer retiree health benefits had dropped from 66% in 1988 to 34% in 2001. Although 73% of those employers still offering coverage reported that they were very unlikely to eliminate retiree health benefits, 48% report that they were very or somewhat likely to increase the retiree share of contributions for premiums.

Under current law, an employee's act of retirement is a COBRA qualifying event. Although this might be an attractive option for those without access to a retiree health plan, the coverage is limited in its duration to the maximum applicable number of months (18, 29, or 36). Under the following circumstances, a covered employer must offer a retiring employee access to COBRA or to a retiree plan that satisfies COBRA's requirements for benefits, duration, and premium.

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[7] Kaiser Commission on Medicaid and the Uninsured, *COBRA Coverage for Low-Income Unemployed Workers* (Washington: Kaiser Commission, 2001).

[8] U.S. Bureau of the Census, *Health Insurance Coverage: 2000*. [http://www.census.gov/hhes/www/hlthin00.html]

- If a covered employer offers no retiree health plan, the retiring employee must be offered COBRA coverage.

- If the employer does offer a retiree health plan but it is different from the coverage the employee had immediately before retirement (for example, if the plan is only offered for 6 months, or if the premium is higher than it was for the employee immediately before the 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 a qualified beneficiary under COBRA, and the employer is not required to offer COBRA coverage upon termination of the retiree plan.

- 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 upon the employee's retiring (because coverage under the plan was not lost), 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 retiree's or the retiree's spouse or dependent children's 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 in the event that a former employer terminates the retiree health plan under a bankruptcy reorganization under Chapter 11. 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.

Cost Issues

Employees are concerned about the cost of COBRA coverage. A 2001 Kaiser study[9] provided figures for the average premiums for employer-sponsored health insurance coverage in 2001. The cost for single coverage was $2,650 and for family coverage, $7,053. On average, employers cover approximately 74% of the premium for a family plan, leaving the employee's share at about $1830. Under COBRA, the employee must pay 102% of the premium, or almost $7200. This can be a hardship for newly-unemployed individuals.

Employers also express concerns about costs. Charles D. Spencer & Associates, employee benefits analysts, produce an annual COBRA survey of employers who

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[9] Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits 2001 Annual Survey* (Washington: Kaiser Family Foundation, 2001).

subscribe to their service.[10] In their 2000 survey, they found that the *claims costs* of COBRA continuation coverage for the plan year 1999 were on average 54% higher than the claims costs of insurance coverage for active employees. The average annual health insurance costs per active employee was $3,936, the COBRA cost was $6,051. 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 claims costs. However, because this survey does not represent a random sample of employers, it is not known whether its findings are representative of all employers in the United States.

Proposed Federal Subsidies for COBRA Premiums. Even before the terrorist attacks of September 11, 2001, the U.S. economy was undergoing a marked slowdown. The attacks led to a greater increase in the number of unemployed workers. The Bureau of Labor Statistics' October 2001 *Employment Situation* indicated that nonfarm payroll employment dropped by 415,000 between October 1 and October 31, resulting in an unemployment rate of 5.4%, which was the highest monthly rate since December 1996. Concern has risen for workers who will not only lose their jobs but will also lose their employer-sponsored health care insurance.

Some policymakers and analysts suggest providing federal subsidies for COBRA premiums as a possible means of lowering the number of uninsured. These subsidies could be in the form of direct payments to employees or employers, or as tax credits to either party.

In recent years, several studies have been conducted regarding the benefits and costs of proposed subsidies. A January 1998 report from the Congressional Budget Office (CBO)[11] constructed prototypes for 6-month subsidy programs that restricted eligibility to those who, among other criteria, were receiving unemployment compensation and whose income was below 240% of the poverty line. The subsidy would be 100% for those with incomes below the poverty line and would decrease linearly as the beneficiary's income rose, phasing out when income reached 240% of poverty. Assuming unemployment rates of 4.7% and 5.8%, CBO estimated that between 1.4 million and 1.7 million workers would take advantage of the program, at a cost of $1.7 billion to $2.1 billion to the federal government. The number of uninsured would have been reduced by about 350,000 to 425,000 (out of 40 million) in a typical month; slightly over 1 million people would get at least one month of coverage they would not otherwise have had. CBO determined that if there were no new federal subsidy program, about half of the individuals in the prototype would have had coverage either through a program subsidized by their former employer or through their own purchases of COBRA or individual health insurance. It concluded that although the prototype would provide continuity of coverage for some eligible individuals, the program would not make large changes in the numbers of uninsured and would not affect the chronically uninsured.

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[10] Charles D. Spencer & Associates, Inc., *2000 COBRA Survey* (Chicago: August, 2000).

[11] U.S. Congressional Budget Office, *Proposals to Subsidize Health Insurance for the Unemployed* (Washington: Congressional Budget Office, 1998). Two of the options are discussed here, but several additional variations are provided in the report.

Other studies present varying options for federal subsidies for COBRA premiums. Thomas Rice of the University of California at Los Angeles School of Public Health[12] proposed a baseline policy for federal subsidies which would be made on behalf of COBRA-eligible employees (and their families) whose incomes did not exceed 300% of the poverty line and who had worked for their employer for at least the last 6 months. The maximum subsidy, available to people at or below 200% of poverty, would be 90% and would be reduced on a sliding scale, reaching 0% at 300% of poverty. The plan would target those who most need assistance with paying for COBRA coverage, but would add the administrative burden of determining income levels of COBRA-eligibles. Rice proposed alternative options which would eliminate income restrictions or limit coverage to employees receiving unemployment compensation.

Jonathan Gruber of the Massachusetts Institute of Technology[13] proposed the establishment of a "COBRA-LOAN" program, creating a new federal agency to provide loans for the full cost of the premium to any qualified COBRA-eligible individual. The employer would pay the COBRA premium on behalf of the employee and be reimbursed by the new government entity. The employer's payment would be in the form of a tax credit equal to the amount of the premium and the 2% administrative fee. Beneficiaries would repay the government entity beginning one year after their participation in COBRA ended. Loan forgiveness would be extended to low-income individuals.

Another suggested form of government subsidy has been a tax credit that could be applied to the cost of COBRA premiums. Under current law, for individuals whose uncompensated medical expenses exceed 7.5% of their adjusted gross income, COBRA premiums are a deductible medical expense. The *deduction* is taken when calculating taxable income—before determining what is owed in taxes. The deduction reduces the income level that is used to calculate the tax owed. However, this benefit is only available to those whose medical expenses are high and who itemize their tax returns, and the value of the deduction varies with an individual's tax rate. A tax *credit,* on the other hand, would be applied after the tax amount has been determined and it would reduce, by the full value of the credit, the amount of the tax that is owed. It would not be dependent upon whether the taxpayer itemizes their return, and it would not vary according to an individual's tax rate. A tax credit could be designed in various ways, depending on the target population. It could be a dollar amount (for example, a $1,000 tax credit for the purchase of health insurance) or a percentage (such as a credit equal to 50% or 75% of a premium). Or it could be a combination of both, such as a percentage with a dollar amount as a cap.

A tax credit is a method of encouraging those who might not otherwise buy health insurance to do so. However, this might not be attractive to individuals with small tax liabilities. For instance, if there was a $1,000 tax credit, but the taxpayer owed only $500 in tax, the taxpayer would not benefit from the full credit. Some

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[12] Thomas Rice, *Subsidizing COBRA: An Option for Expanding Health Insurance Coverage* (Washington: Kaiser Family Foundation, 1999).

[13] Jonathan Gruber, *Transitional Subsidies for Health Insurance Coverage* (New York: Commonwealth Fund, 2000).

proposals are designed to make the credit "refundable," that is, the taxpayer would receive a refund for the balance of the credit. In some instances, individuals do not have funds to pay their health insurance premiums on a monthly basis. They would not be helped by a tax credit that was not available until the end-of-the-year tax filing. Some tax analysts have suggested an "advanceable" tax credit, that is, one that would be available before a person files their tax return. Such a credit was enacted by the Trade Act of 2002 (see below under "Legislation").

Jeff Lemieux of the Progressive Policy Institute advocates refundable tax credit for COBRA coverage, which would be available to former employees who are receiving unemployment compensation.[14] The credit would be means-tested, that is, the full credit (either some determined dollar amount or a percentage of the premium) would be available to people at some established income level and would decrease as the income level rose. The credit would be available immediately, rather than later when employees pay their taxes. This would be accomplished by the employer's reducing the employee's COBRA premium payment by the applicable tax credit amount. The employer would then deduct that amount from its regular tax payments to the government.

There are advantages to subsidizing COBRA benefits, especially with means-tested assistance such as mentioned above. For example, vulnerable populations would be provided with the means to purchase insurance coverage. Additionally, because more people would opt for COBRA coverage, the numbers of uninsured would be reduced. Further, people would be able to move more freely between jobs without losing health care coverage.

On the other hand, a relatively small part of the uninsured population is affected. Many work for small employers who are exempted from providing COBRA coverage. Others are offered insurance on the job, but cannot afford to purchase it. Further, subsidizing COBRA would likely be expensive. Because employees are guaranteed the same coverage they had immediately before the qualifying event, the policy might be a generous one with a high premium. In addition, government subsidies might be paid on behalf of people who would otherwise have purchased other insurance independently. Finally, subsidizing COBRA can provide disincentives to individuals seeking new employment, resulting in increased expenditures on unemployment compensation payments.

High-Deductible Plans. A different approach toward lowering premiums was included in S. 24, 107th Congress. It would have created two new high-deductible COBRA plans. These could have been selected by individuals who wanted coverage for catastrophic costs only. Beneficiaries would have been able to select among plans with either a $1,000 or $3,000 deductible or traditional COBRA coverage. The intent was to provide COBRA coverage options with lower premiums. Higher deductibles could have the effect of lowering the premium for the plan, thus encouraging more participation. This bill did not become law.

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[14] Jeff Lemieux, *Transitional Health Coverage: A Tax Credit for COBRA* (Washington: Progressive Policy Institute, 2001).

Legislation in the 107th Congress

The Trade Act of 2002 (P.L. 107-210) included a provision establishing a refundable, advanceable tax credit (see discussion above) for the purchase of qualified health insurance, including COBRA coverage. The credit, equal to 65% of the amount paid in premiums, is available to workers (and their spouses and dependents) who have been certified as being adversely affected by foreign trade. To be covered, individuals must be eligible for a trade adjustment allowance (TAA) or be age 55 or over and receiving a pension through the Pension Benefit Guaranty Corporation (PBGC). The Act also provided for an additional election period for TAA-eligible individuals who did not elect COBRA initially at the time they lost coverage due to a TAA-related event. Such individuals may elect COBRA in a special 60-day period beginning on the first day of the month in which they become eligible for TAA, but only if the election is made within 6 months of the date of the original loss of coverage. Coverage itself begins on the first day of the special 60-day election period. In addition, the law states that the period between the date of the TAA-related loss of coverage and the first day of the special election period cannot be considered for purposes of preexisting conditions exclusions. (For a more complete discussion of this legislation, see CRS Issue Brief IB98037: *Tax Benefits for Health Insurance: Current Legislation,* by Bob Lyke.)

A number of bills were introduced in the 107th Congress to address some of the issues discussed above. Other legislation would have provided assistance with COBRA premiums for workers and their families who lost coverage due to events springing from the terrorist attacks of September 11, 2001. None of these bills was enacted before the end of the Congress.

Displaced Worker Legislation

- Title V of H.R. 3090, the Economic Security and Recovery Act of 2001, contained health care assistance for the unemployed through the Social Service Block Grant program (Title XX of the Social Security Act). It provided an additional $3 billion for FY2002 for states to assist unemployed individuals who were not eligible for any federal health insurance programs with the purchase of health insurance. Among other options open to them, states would have had the option to decide to use these funds to assist people with their COBRA premium payments. H.R. 3090 was passed by the House on October 24, 2001. The version of the bill that became public law (P.L. 107-147) did not contain the health care assistance provisions.

- The Senate's Economic Recovery and Assistance for American Workers Act of 2001, an amendment in the nature of a substitute to H.R. 3090, provided a 75% premium subsidy for COBRA-eligible people who lost their coverage due to the events of September 11. The subsidies could have lasted up to 12 months and would have been paid by the Department of the Treasury directly to group health plans, employers, or state unemployment insurance offices. The program would have expired December 31, 2002. The package was reported by the Senate Finance Committee on November 9, 2001, but was withdrawn from the Senate floor by unanimous consent on November 14.

- S. 1454, H.R. 2946, and H.R. 2955 would have required the Secretary of Labor to provide for government payment of COBRA premiums for those who had become totally or partially separated, as a result of the September 11 attacks, from employment with an air carrier, at a facility at an airport, with a provider of transportation to or from an airport, or with an "upstream producer or supplier for an air carrier."[15] H.R. 3045 would have provided the same payment of COBRA premiums, limited to the aircraft manufacturing industry. (For a complete discussion of these bills, see CRS Report RS21047, *Unemployment Related to Terrorist Attacks: Proposals to Assist Affected Workers in the Airlines and Related Industries*, by Paul Graney.)

- On October 4, 2001, President Bush unveiled his Back to Work Relief Package. Part of the package was directed at National Emergency Grants (NEGs), which are grants made by the Department of Labor to states experiencing plant closings or mass layoffs. An additional $3 billion would have been provided for these grants to assist dislocated workers. Under the President's plan, the governor of a state would certify that closures, layoffs, or dislocations in the state were closely linked to the terrorist attacks of September 11. States could use the grant money for, among other purposes, paying up to 75% of COBRA premiums for up to 10 months for these workers.

- A bill unrelated to terrorism but aimed at displaced workers was S. 1209, which would have established a 50% tax credit for COBRA premiums paid by workers who lost their jobs due to the negative impact of foreign trade and were eligible for trade adjustment assistance.

Expanding COBRA Eligibility

Other bills would have expanded COBRA eligibility to include certain defined groups:

- A number of legislative proposals would have extended coverage to a small but potentially growing population—retirees whose former employer terminates or significantly reduces benefits provided under its retiree health insurance plan. H.R. 803, H.R. 1255, and S. 623 would have established a new qualifying event: loss of or a

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[15] The bill defines *upstream producer* as a firm that performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles for another firm.

substantial reduction in coverage under a retiree health plan. "Substantial reduction" was defined as a 50% reduction in the total average actuarial value of the plan through a reduction or elimination of benefits or an increase in premiums. The new COBRA beneficiaries would have been offered the coverage option most commonly used by other COBRA beneficiaries in the group plan, or other coverage which might be offered and elected by the retiree. Employers would have been permitted to charge 125% of the premium. Coverage would have lasted until the retiree and his/her spouse became entitled to Medicare.

- H.R. 1078 contained similar provisions to those mentioned above, except they would have applied only when a retiree health plan was terminated. The bill would have allowed the employer to charge 110% of the cost of the coverage.

Other bills would have expanded the duration of COBRA coverage:

- H.R. 2005 would have allowed individuals aged 55-64 whose COBRA benefits would expire under current law to extend their COBRA coverage until they became entitled to Medicare.

- Two bills, H.R. 2005 and H.R. 1663, would have lengthened the duration of COBRA coverage from 18 or 36 months to 5 years. S. 24 would have lengthened the duration from 18 to 24 months. It would not have affected those situations where duration was 36 months.

Tax Provisions

Under the eligibility expansion bills discussed above, the administrative fee for retirees would have been raised to between 10% and 25%. The 2001 Kaiser study estimated that the average annual premium for active employees in employer-sponsored plans in 2001 was $2,650 (individual) and $7,053 (family). Assuming a 125% premium, these amounts would be $3,312 and $8,816, respectively. Such amounts could be prohibitively expensive for all but higher income retirees and those retirees for whom the coverage is critical because they have a preexisting medical condition.

Several bills would have provided tax breaks to address this problem. Under current law, for individuals whose uncompensated medical expenses exceed 7.5% of their adjusted gross income, COBRA premiums are a deductible medical expense. Although the deduction reduces the income that is used to calculate the tax owed, it is only available to those whose medical expenses are high and who itemize their tax returns. The bills listed below would have provided tax *credits* for COBRA premiums. A tax credit, not dependent upon itemization, is applied against the taxpayer's tax liability, reducing, dollar for dollar, the amount of tax owed.

- H.R. 803, H.R. 1255, and S. 623 would have allowed a tax credit of 50% on premiums paid for COBRA coverage by those retirees established as qualified beneficiaries under their provisions.

- H.R. 2005 would have allowed a 50% tax credit for all COBRA premiums.

- S. 590 would have allowed a tax credit for premiums paid for health insurance coverage, including COBRA coverage. It would have provided a $1,000 annual credit for a person with income up to $35,000 to purchase individual coverage and a $2,500 credit for a taxpayer with income up to $55,000 to purchase family coverage.