



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

June 28, 2016

Number: **2016-0045**
Release Date: 9/30/2016

CONEX-116499-16

UIL: 4980B.00-00, 4980B.02-00

The Honorable Patrick Tiberi
Member, U.S. House of Representatives
250 East Wilson Bridge Road, Suite 100
Worthington, OH 43085

Attention:

Dear Representative Tiberi:

I am responding to your inquiry on behalf of _____ about COBRA continuation coverage. _____ asked about whether the seller or buyer is responsible for providing him with COBRA continuation coverage because of a sale of stock of his employer.

We cannot provide a definitive position of the IRS on the application of the law to particular facts. However, we can provide the following general information to you and

Section 4980B of the Internal Revenue Code provides generally that a group health plan must offer each qualified beneficiary who would otherwise lose coverage under the plan because of a qualifying event an opportunity to elect, within the election period, continuation coverage under the plan. The Treasury Regulations addressing COBRA continuation coverage provide guidance on the application of the COBRA continuation coverage requirements in cases of business reorganizations such as stock sales (see Treasury Regulation section 54.4980B-9). However, if _____ qualifying event did not occur before or in connection with the sale of stock of his employer, those rules would not apply to his situation.

The regulations also address situations in which a qualified beneficiary may change from the coverage the individual received immediately before the qualifying event. See

Treasury Regulation section 54.4980B-5. In particular, those regulations provide the following:

Q-1: What is COBRA continuation coverage?

A-1: (a) If a qualifying event occurs, each qualified beneficiary (other than a qualified beneficiary for whom the qualifying event will not result in any immediate or deferred loss of coverage) must be offered an opportunity to elect to receive the group health plan coverage that is provided to similarly situated nonCOBRA beneficiaries (ordinarily, the same coverage that the qualified beneficiary had on the day before the qualifying event). See Q&A-3 of § 54.4980B-3 for the definition of similarly situated nonCOBRA beneficiaries. This coverage is COBRA continuation coverage. If coverage is modified for similarly situated nonCOBRA beneficiaries, then the coverage made available to qualified beneficiaries is modified in the same way. If the continuation coverage offered differs in any way from the coverage made available to similarly situated nonCOBRA beneficiaries, the coverage offered does not constitute COBRA continuation coverage and the group health plan is not in compliance with COBRA unless other coverage that does constitute COBRA continuation coverage is also offered. Any elimination or reduction of coverage in anticipation of an event described in paragraph (b) of Q&A-1 of § 54.4980B-4 is disregarded for purposes of this Q&A-1 and for purposes of any other reference in §§ 54.4980B-1 through 54.4980B-10 to coverage in effect immediately before (or on the day before) a qualifying event. COBRA continuation coverage must not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

* * * * *

Q-4: Can a qualified beneficiary who elects COBRA continuation coverage ever change from the coverage received by that individual immediately before the qualifying event?

A-4: (a) In general, a qualified beneficiary need only be given an opportunity to continue the coverage that she or he was receiving immediately before the qualifying event. This is true regardless of whether the coverage received by the qualified beneficiary before the qualifying event ceases to be of value to the qualified beneficiary, such as in the case of a qualified beneficiary covered under a region-specific health maintenance organization (HMO) who leaves the HMO's service region. The only situations in which a qualified beneficiary must be allowed to change from the coverage received immediately before the qualifying event are as set forth in paragraphs (b) and (c) of this Q&A-4 and in Q&A-1 of this section (regarding changes to or elimination of the coverage provided to similarly situated nonCOBRA beneficiaries).

* * * * *

(c) If an employer or employee organization makes an open enrollment period available to similarly situated active employees with respect to whom a qualifying event has not occurred, the same open enrollment period rights must be made available to each qualified beneficiary receiving COBRA continuation coverage. An open enrollment period means a period during which an employee covered under a plan can choose to be covered under another group health plan or under another benefit package within the same plan, or to add or eliminate coverage of family members.

In the case of _____, non-COBRA beneficiaries in similar situations may be considered the active employees of the buyer previously covered under the plan provided by the seller on behalf of the buyer under the purchase agreement who are allowed to enroll in other group health plans of the buyer. In other words, the buyer should provide the same enrollment opportunity to a COBRA beneficiaries as it provides to active employees in similar situations who are not COBRA beneficiaries.

Thus, if the buyer allows the active employees of the buyer previously covered under the plan provided by the seller on behalf of the buyer under the purchase agreement to enroll in other group health plans of the buyer, the buyer should provide that same enrollment opportunity to COBRA beneficiaries previously covered under the plan provided by the seller on behalf of the buyer.

In addition, section 502 of Title I of ERISA provides, in relevant part, that a participant or beneficiary may bring a civil action “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” If _____ believes he is improperly being denied benefits or coverage to which he is entitled, he may wish to contact an attorney or a legal aid organization.

I hope this information is helpful. If you have any questions, please call me at _____ or _____ at _____.

Sincerely,

Christine Ellison, Acting Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)