

COBRA Facts of Life Include QMCSOs

By: Constance Gilchrest

The Facts of Life was a TV sitcom from 1979 to 1988 that focused on a group of girls growing up without a two-parent family unit. A fact of life in 2011 is that benefit administrators often have to work through issues in situations similar to those of the characters on that show.

Most people tend to resist being told what to do. However, there are times when someone just does not have a choice. A Qualified medical child support order (QMCSO) is a family court order, judgment or decree that requires a parent to provide health coverage for a child. This would even apply if the child does not meet the dependent definition under the plan terms since the employee generally will be the parent that does not have custody of the child.

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The basic rules for QMCSOs are found in Section 609 of ERISA. QMCSOs do not apply to governmental plans; they do apply to church plans, even though those plans are not subject to COBRA.

More Background

The QMCSO may apply to children: (1) born out of wedlock (for example, in a paternity suit); (2) who are not dependents under the IRS definition; or (3) who are not considered to be a dependent per the plan terms. This group of children is commonly referred to as “alternate recipients.”

Generally, the QMCSO cannot require a plan to provide family coverage if the plan only offers single or employee-spouse coverage. The employer is not required to offer

any type of benefits that are not provided under the plan (for example, preventive care) or any form of benefit not provided under the plan (for example, HMO) or any option not provided (for example, lower deductible).

The employer needs to scrutinize the QMCSO language to determine whether it provides a reasonable description of the coverage to be offered. Potentially, the required coverage could include any and all coverage subject to COBRA: medical, dental, vision, health flexible spending accounts and health reimbursement arrangements. It is always permissible to contact the entity or court issuing the QMCSO and seek clarification.

The QMCSO must specifically include the duration the coverage is to be provided and generally will provide the specific age limit when the coverage will cease.

The coverage cannot be denied from an insurer or plan, based on the following:

- The child does not reside in the insurer’s service area.
- The child does not reside with the employee.
- The child is not claimed as a tax dependent.
- The child was born out of wedlock (paternity suit).
- The child is covered by Medicaid.

When a QMCSO is issued, the employer is required to treat the child just as any beneficiary who is covered under the group health plan. This would also include offering COBRA when a qualifying event occurs causing a loss of coverage per the plan terms. In addition, the U.S. Department of Labor (DOL) has indicated that QMCSO alternate recipients are COBRA qualified beneficiaries when added to COBRA coverage.



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QMCSOs and COBRA

Two qualifying events clearly apply when a QMCSO is issued:

- 1) Divorce or legal separation
- 2) Dependent ceasing to be a dependent

The question arises, though, on whether a child losing coverage because the QMCSO expires (for example, at age 18) constitutes a COBRA qualifying event. On the one hand, the statutory language requires that the eligibility cease “*under the generally applicable requirements of the plan.*” This would not be due to plan terms, but the QMCSO itself. Thus, it would not be a qualifying event. On the other hand, neither DOL nor the IRS has specifically addressed this issue and if a court held that this was a COBRA qualifying event, the costs of retroactive coverage could be high.

Some Differences

There are some differences between the COBRA requirements and QMCSO requirements. One major issue is that a qualified beneficiary has 60 days from the later of the following dates to elect COBRA: (1) the qualifying

event date; or (2) the date coverage would be lost on account of the qualifying event. The QMCSO does not have any such time frame.

COBRA notices should be sent directly to the child’s last known address because it is probably different from the employee’s address and thus the single notice rule would not apply. It is recommended to also send copies of notices to the employee even though in most cases the child does not reside with the employee.

There are some instances when the employee does not know the whereabouts of the child or ex-spouse. An attorney or friend of the court will be appointed to handle all the affairs on behalf of the child or other parent. In such cases, all COBRA notices should be sent to this appointed person only.

Because QMCSO scenarios do not arise often, the receipt of one in the mail can sometimes leave an employer flat-footed on how to proceed.

COBRA Situations

Following are some COBRA situations that could occur involving a QMCSO:

- John Young experienced a termination of employment and during his sixth month of COBRA, received a paternity suit and was issued a QMCSO. The employer added the child to the plan and increased the COBRA premium from single to family coverage.

Due to the cost of insurance, John could not afford to pay for his own insurance and wanted the newborn to remain on COBRA. John is allowed to do this since the child is a qualified beneficiary. Therefore, the newborn could remain on COBRA for the remainder of the 18-month period.

- Sally Carefree had family coverage under her employer’s group health plan. When she terminated her employment, Sally elected and paid for COBRA for the qualified beneficiary/twins. Later, a divorce occurred, at which time the plan was notified within 60 days and an extension of a total of 36 months of COBRA was provided to the twins.

Due to the divorce, a QMCSO was issued requiring Sally to provide coverage for the twins until they reach

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age 18. Sally became so happy-go-lucky, the court found that she could not have visitation rights or know the whereabouts of the twins. Therefore, an attorney was appointed to handle all affairs for the twins.

All future notices should be sent to the attorney to notify of the proper COBRA monthly premiums (though not required) and the COBRA conversion and expiration notices. Due to COBRA expiring after 36 months, Sally would have to seek other coverage for the twins since the QMCSO stated coverage be provided until their 18th birthday.

If Sally later gains group coverage through a new employer, the QMCSO would still apply, requiring the new employer to provide coverage for the twins and Sally even if she had not gone on the plan when she first became eligible.


- Sam Poorboy did not have coverage under his employer's group health plan. However, the employer received a QMCSO to provide Sam's child health coverage. The employer added Sam and his child to their group health plan providing coverage for one month. Even though Sam was working full

time, his earnings did not leave him enough money to live on after deducting the cost of the insurance. Sam contacted the court system and let them know of his situation and the hardship it was causing him to have health coverage. The QMCSO was reversed by the court system and coverage ceased.

Now comes the question, is this a qualifying event to offer COBRA to both Sam and his child? The answer would be no, it would be a voluntary termination of coverage and COBRA would not need to be offered.

Good Resource

Because QMCSO scenarios do not arise often, the receipt of one in the mail can sometimes leave an employer flat-footed on how to proceed. A good governmental resource is the DOL's *Compliance Guide for Qualified Medical Child Support Orders*, which is available at <http://www.dol.gov/ebsa/publications/qmcs.html>.

Some experiences can become very difficult and seem like they come straight out of a TV show. Losing employment or going through a divorce can make things miserable, but life becomes a reality and goes on. In those situations, a QMCSO is often a simple fact of life that employers need to handle correctly to avoid any complications or possible lawsuits. 

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