

REPORT OF THE COUNCIL ON MEDICAL SERVICE

CMS Report 3 - A-03
(June 2003)

Subject: Health Care Benefit Discrepancies for Small Employers
Under COBRA (Resolution 109, A-02)

Presented by: Cyril "Kim" Hetsko, MD, Chair

Referred to: Reference Committee A
(Kevin T. Flaherty, MD, Chair)

1 At the 2002 Annual Meeting, the House of Delegates referred Resolution 109 to the Board of
2 Trustees. Introduced by the Texas Delegation, the resolution calls for the AMA to “seek relief for
3 the employees of small employers so their eligibility for extended health care benefits is on par
4 with employees who work for large employers”; and further, to “seek support for changes in the
5 Consolidated Omnibus Budget Reconciliation Act of 1985 that would enable small employers to
6 afford the same extended health care coverage for their employees currently available to large
7 employers.” The Board referred this issue to the Council on Medical Service for a report back to
8 the House at the 2003 Annual Meeting.

9 10 COBRA CONTINUATION COVERAGE

11
12 The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created requirements for
13 the continuation of employment-based group health insurance for 18 months for displaced workers
14 and their families, as well as for workers who lose their eligibility for health insurance because they
15 change jobs or work fewer hours. Employers with 20 or more employees on a typical business day
16 in the previous calendar year are required to offer COBRA coverage and to notify departing
17 employees of the availability of such coverage. COBRA applies to private sector employees, and
18 to most state and local government workers, but does not apply to plans sponsored by the federal
19 government and certain church-related organizations.

20
21 COBRA does not require employers to pay any portion of the premium for displaced workers, and
22 allows employers or their health plan administrators to collect an administrative fee equal to two
23 percent of the premium. The cost of continuation coverage can, therefore, seem very high to a
24 newly unemployed worker whose employer had previously paid a majority of the premium. In
25 addition, the former worker must take proactive steps to enroll for COBRA continuation benefits.
26 To be eligible for COBRA coverage, a former worker must have been enrolled in the employer’s
27 health plan when he or she worked, and the health plan must continue to be in effect for active
28 employees.

29 30 SMALL BUSINESS COVERAGE

31
32 The percentage of employers with fewer than 20 employees that offer health insurance benefits to
33 active employees is relatively low. According to 2001 data compiled by the Employee Benefit
34 Research Institute, 29% of workers in firms with fewer than 10 employees received health
35 insurance through their employers, and 41% of workers in firms with 10-24 employees received
36 coverage through their employers.

1 Many states have laws that require smaller businesses to provide similar COBRA-like coverage.
2 The appendix to this report contains data compiled by the Kaiser Family Foundation showing that
3 38 states have laws that extend COBRA-like provisions to small employers. There is wide
4 variation in the duration of the coverage under such laws, ranging from 30 days to 18 months.
5 State continuation coverage expansions may be exempt from regulatory requirements that would
6 apply to COBRA coverage. In addition, state expansions may allow the continuation coverage to
7 be a separate, less rich, benefit package than the coverage available to active employees.
8

9 Resolution 109 (A-02) presumes that because there is no law mandating the continuation of small
10 employers' voluntary health insurance coverage, small business employers are barred from
11 voluntarily offering such coverage. The Council finds no evidence to substantiate the belief that
12 small employers are unable to voluntarily offer their employees the same eligibility benefits of
13 extension of health care coverage as large employers.
14

15 As previously noted, no more than 41% of active employees in small businesses receive health
16 insurance coverage. For those small businesses that do provide coverage to active employees, and
17 are not mandated to provide continuation coverage for former employees, such coverage could
18 have a significant impact on their small risk pools. Therefore, it seems likely that, in some
19 circumstances, small employers may be reluctant to keep their former employees in their risk
20 pools, as it may increase the health insurance costs for their active employees. It is possible that in
21 those states where small employers are required to provide continuation coverage, their health
22 insurance costs reflect the increased cost of extending group coverage to former employees.
23 Accordingly, it is possible that such requirements to provide continuation coverage may hinder the
24 ability of small businesses to provide coverage to active employees.
25

26 Should a small business, nevertheless, want to provide continuation coverage, the barrier is not a
27 matter of law, but probably a matter of cost. In addition, because of the sensitivity of small risk
28 pools to each member of the pool, it may be that health plan administrators discourage the
29 continuation of coverage in small groups. Since COBRA does not require continuation coverage
30 by small employers, small employers in states that lack a state-mandated continuation coverage
31 requirement would have no reason to include a provision for such coverage in their contracts with
32 health plans. However, if small businesses wish to provide continuation coverage to their former
33 employees, and can afford to do so, there is nothing in the law that would prevent them from
34 renegotiating their contracts with their health plan administrators. The renegotiated rate is likely to
35 be at a higher cost.
36

37 EMPLOYER SIZE IRRELEVANT WITH INDIVIDUALLY OWNED INSURANCE

38

39 Resolution 109 (A-02) supports seeking to have COBRA amended so that it applies to employers
40 of all sizes. Yet, even if the AMA were successful in bringing about such a change in COBRA, it
41 still would only apply to those employees whose employers have an existing employee group
42 health plan — currently 29% of employees in firms with fewer than 10 employees, and 41% of
43 employees in firms with 10-24 employees.
44

45 An employer mandate would address the low number of small businesses offering coverage, but
46 such a mandate would be highly inconsistent with Policy H-165.920(5) (AMA Policy Database),

1 which supports individually selected and individually owned health insurance as the preferred
2 method for people to obtain health insurance coverage; and supports and advocates a system where
3 individually-purchased and owned health expense coverage is the preferred option, but employer-
4 provided coverage is still available to the extent the market demands it. The House of Delegates
5 officially rescinded previous AMA policy in support of an employer mandate in 2000.
6 Accordingly, the Council believes advocating for a legislative expansion of COBRA would
7 perpetuate the employment-based system, and prolong the relationship between displaced workers
8 and their former employers after employment has ended.

9
10 In order to enable individuals to purchase coverage, Policy H-165.920(12) supports a replacement
11 of the present exclusion from employees' taxable income of employer-provided health insurance
12 with tax credits for individuals and families. Policy H-165.865 provides nine principles to guide
13 the development of tax credit legislation, including that tax credits be refundable, of a size that is
14 inversely related to income, and of a size to ensure that health insurance is affordable for most
15 people. Highly visible AMA advocacy of Policies H-165.920 and H-165.865 would be diminished
16 if the AMA were to undertake advocacy to expand the employment-based system, particularly in a
17 manner that may undermine the laudable efforts of small businesses to provide coverage to
18 employees who otherwise would be uninsured.

19
20 In addition, businesses with fewer than 50 employees, as well as the self-employed, are able to
21 establish Medical Savings Accounts (MSAs). MSAs were authorized under a pilot project by the
22 Health Insurance Portability and Accountability Act of 1996 as tax-exempt personal savings
23 accounts that must be used for qualified medical expenses. MSA contributions in any given year
24 can be made by either, but not both, the employer or the employee. MSAs are fully owned by the
25 individual employee, and are portable and usable following the loss of employment. Policies H-
26 165.869, H-165.879, and H-165.920(7) support broader use of MSAs as a means to provide
27 individual coverage. In particular Policy H-165.869(3a) advocates repeal of various restrictions on
28 MSAs, including removal of the demonstration status of the project.

29
30 CONCLUSION

31
32 After careful consideration of varying alternatives, the Council could not support a solution that
33 would achieve less than what AMA policy already supports. That is, current AMA policy
34 advocates for fully portable MSAs and individually owned health insurance, which would
35 ameliorate the need for COBRA and state laws regarding similar continuation coverage for small
36 businesses.

37
38 The Council believes there are ways that the AMA can encourage small business employers who
39 want to provide coverage for active and former employees. Specifically, the AMA could
40 encourage small businesses to establish portable MSAs for their employees. In addition, the
41 Council believes the AMA should encourage small employers who provide their employees with
42 group health insurance benefits, to provide continuation coverage to former employees, ideally
43 consistent with the 18 months of coverage under COBRA, to the extent that such employers are
44 able to do so without jeopardizing the coverage of active employees.

45

1 The Council concluded that making COBRA, or coverage similar to COBRA, apply to all
2 employers regardless of business size, as advocated by Resolution 109 (A-02), would require
3 national legislation, state legislation, or both; mirroring the efforts of 38 states to require small
4 businesses that provide coverage for active employees to also provide some level of continuation
5 coverage to displaced employees. The Council believes model state legislation would be a less
6 efficient means of accomplishing the goals of national legislation, and it would raise, but not
7 answer, the question of how proscriptive the model legislation should be. In addition, state laws
8 that mimic COBRA would be exempted by the Employee Retirement Income Security Act of 1974
9 (ERISA) from applying to employer self-funded plans. In addition, the Council believes expanding
10 the national scope of COBRA to apply to small businesses would be counterproductive to the goal
11 of decreasing the number of uninsured individuals.

12

13 The Council notes that state medical associations are best able to assess the appropriateness of their
14 state laws pertaining to continuation of health insurance coverage for small businesses, and best
15 able to seek to amend those state laws that are found to be limiting.

16

17 RECOMMENDATIONS

18

19 The Council on Medical Service recommends that the following be adopted in lieu of Resolution
20 109 (A-02), and that the remainder of the report be filed:

21

22 1. That the American Medical Association (AMA) reaffirm Policy H-165.920(5), which supports
23 individually selected and individually owned health insurance as the preferred method for
24 people to obtain health insurance coverage; and supports and advocates a system where
25 individually purchased and owned health expense coverage is the preferred option, but
26 employer-provided coverage is still available to the extent the market demands it. (Reaffirm
27 HOD Policy)

28

29 2. That the AMA reaffirm Policy H-165.869(3a), which advocates repeal of the demonstration
30 status of the Medical Savings Account project. (Reaffirm HOD Policy)

31

32 3. That the AMA support the principle that small employers who provide their employees with a
33 group health insurance benefit, and who can afford to do so, should be encouraged to provide
34 continuation coverage for their former employees, ideally consistent with the 18 months of
35 coverage under COBRA. (New HOD Policy)

36

37 4. That the AMA encourage small employers to establish individual Medical Savings Accounts
38 for their employees. (Directive to Take Action)

Appendix

| STATE CONTINUATION COVERAGE FOR SMALL FIRM EMPLOYEES (COBRA EXPANSIONS) | | | | | |
|--|-----------------|------------------------|----------------|-----------------|-------------------------|
| State | COBRA Expansion | Duration | State | COBRA Expansion | Duration |
| Alabama | No | | Nebraska | Yes | 6 months ² |
| Alaska | No | | Nevada | Yes | 18 months ¹ |
| Arizona | No | | New Hampshire | Yes | 18 months |
| Arkansas | Yes | 120 days | New Jersey | Yes | 12 months |
| California | Yes | 18 months | New York | Yes | 18 months ¹ |
| Colorado | Yes | 18 months | North Carolina | Yes | 18 months |
| Connecticut | Yes | 18 months ¹ | North Dakota | Yes | 39 weeks |
| Delaware | No | | Ohio | Yes | 6 months |
| District of Columbia | No | | Oklahoma | Yes | 30 days in some cases |
| Florida | Yes | 18 months | Oregon | Yes | 6 months |
| Georgia | Yes | 3 months | Pennsylvania | No | |
| Hawaii | No | | Rhode Island | Yes | 18 months in some cases |
| Idaho | No | | South Carolina | Yes | 6 months |
| Illinois | Yes | 9 months | South Dakota | Yes | 18 months ¹ |
| Indiana | No | | Tennessee | Yes | 3 months |
| Iowa | Yes | 9 months | Texas | Yes | 6 months |
| Kansas | Yes | 6 months | Utah | Yes | 6 months |
| Kentucky | Yes | 18 months | Vermont | Yes | 6 months |
| Louisiana | Yes | 12 months | Virginia | No | |
| Maine | Yes | 12 months | Washington | No | |
| Maryland | Yes | 18 months | West Virginia | Yes | 18 months |
| Massachusetts | Yes | 18 months ¹ | Wisconsin | Yes | 18 months |
| Michigan | No | | Wyoming | Yes | 12 months |
| Minnesota | Yes | 18 months | Guam | NA | NA |
| Mississippi | Yes | 12 months | Puerto Rico | NA | NA |
| Missouri | Yes | 9 months | Virgin Islands | NA | NA |
| Montana | No | | | | |

Notes: State COBRA expansion programs exist in 38 states and extend coverage to employees in firms with fewer than 20 workers who are not covered by COBRA, the federal law. Coverage under these state continuation programs may differ in duration, restrictions, and eligibility from the coverage provided to workers under federal law.

Sources: Kaiser Family Foundation, which compiled data from the Georgetown University Institute for Health Care Research and Policy, Summary of State Small Group Market Reforms and A Consumer Guide for Getting and Keeping Health Insurance, October 2001. Data is currently as of 2001 for the majority of states, and as of 1998 to 2001 for the remainder.

Footnotes: 1. In some cases, coverage extends to 36 months. 2. In some cases, coverage extends to 12 months.