

December 22, 2011

MEMORANDUM NO: 090-11HR

TO: Agency Administrators

FROM: Bobbie Chappell, Director of Human Resources

VIA: Rip Colvin, Executive Director

RE: Retroactive Termination of Coverage for Subscribers and Dependents

The department of Management Services has issued a policy clarification for retroactive termination of coverage for subscribers and dependents as described below.

Issue:

Subscribers fail to notify People First that their dependents are no longer eligible for coverage due to divorce or other Qualifying Status Change (QSC) events within the QSC event window.

- When can the subscriber remove dependents from coverage?
- Can subscribers receive premium refunds if the change drops them from family to individual coverage?
- To what insurance plans does this apply?

Direction:

As it applies to the State Group Insurance Program, the Federal Health Care Reform Act rescission limitation applies only to health insurance. However, since the program is a Cafeteria Plan, all plans will be treated the same with regard to rescission of coverage.

In most instances, the Service Center must drop ineligible dependents and reduce coverage levels prospectively; however, certain circumstances do allow for the coverage to be retroactively terminated per guidance from legal counsel as described in the examples below.

Examples:

Example 1: Couple divorced with no dependent children – outside COBRA election window

The participant's ex-spouse has been ineligible for coverage since January 1, 2011. The subscriber notified People First on May 8, 2011.

1. Retro terminate the ex-spouse effective the first of the month following the date the judge signed the final judgment of dissolution of marriage (divorce decree).
2. Change the coverage level prospectively from the date of notification (June 1, 2011).
3. Notify the subscriber.
4. Do not send COBRA as an available option because the COBRA enrollment window is closed.
5. Until such time as the weekly file logic is implemented to retro term, People First must notify the carriers of the retro termination so that claims paid in error can be recovered.

Example 2: Couple divorced with no dependent children – within COBRA election window

The participant's ex-spouse has been ineligible for coverage since July 1, 2011. The subscriber notified People First on August 27, 2011.

1. Retro terminate the ex-spouse effective the first of the month following the date the judge signed the final judgment of dissolution of marriage (divorce decree).
2. Change the coverage level prospectively from the date of notification (September 1, 2011).
3. Notify the subscriber.
4. Send COBRA as an available option because the COBRA enrollment window is open.
5. Until such time as the weekly file logic is implemented to retro term, People First must notify the carriers of the retro termination so that claims paid in error can be recovered.
6. If COBRA enrollment and premium received by the enrollment deadline, allow the enrollment.

Example 3: Couple Divorced with natural or adopted children

The participant's ex-spouse has been ineligible for coverage since July 1, 2011. The subscriber notified People First on July 23, 2011.

1. Terminate the ex-spouse August 1, 2011.
2. Review the divorce decree to see which parent is responsible for providing coverage for the dependent children.
 - a. If the subscriber is responsible, keep the dependents on the contract.
 - b. If the ex-spouse is responsible, remove the dependents from the contract effective August 1, 2011.
3. Send COBRA as an available option because the COBRA enrollment window is open.
4. Notification to be provided on the monthly file.

Example 4: Blended family with dependent children – administrative error

The subscriber submitted a copy of a divorce decree January 6, 2010, to remove his ex-spouse and her children effective February 1, 2010. Due to an administrative error, the change was not processed. The error was discovered in May 2011.

1. Email the carrier(s) to determine if claims were paid.
2. If claims were *not* paid:
 - a. Retro terminates the ex-spouse and stepchildren effective the first of the month following the date the judge signed the final judgment of dissolution of marriage (divorce decree).
 - b. If there are no other eligible dependents, correct the coverage level based on the original date of notification and initiate the refund process.
3. If claims *were* paid, do not change the coverage level from the date of notification. Make the change prospectively.
4. Notify the subscriber.
5. Send COBRA as an available option because of the administrative error.

Example 5: System Error

A. COBRA should have expired February 28, 2011. The People First system did not terminate COBRA coverage correctly and the error was caught on May 15, 2011.

1. Notify the state if more than one participant.
2. Terminate the COBRA effective June 1, 2011.

B. Other coverage (dependent of a dependent, layoff, etc.) should have expired, but the People First system did not terminate coverage correctly.

1. Notify the state to determine correct action.

Example 6: Death of the subscriber active and retiree coverage

A. Active employee died November 6.

1. If no eligible dependents, terminate active coverage November 30.
2. If eligible dependents are covered, terminate active employee coverage December 31.
 - a. If a dependent spouse is covered at the time of death, mail a Surviving Spouse package.
 - b. If dependent children are covered at the time of death, mail a COBRA package.

B. Retiree dies November 6.

1. Terminate coverage the first of the following month, December 1.
2. If a dependent spouse is covered at the time of death, mail a Surviving Spouse package.
3. If dependent children are covered at the time of death, mail a COBRA package.

Example 7: Death of a dependent covered under active or retiree coverage

1. Drop the dependent the first of the month following notification.
2. If no other dependents are covered, reduce coverage level prospectively.

Example 8: The agency/university retroactively terminated active employment

1. If premiums were paid and coverage was rendered, terminate coverage prospectively.
2. If premiums were *not* paid, terminate coverage retroactively to the date the active employee coverage should have ended.

Example 9: Early Cancellation after the File Runs

The subscriber terminates employment July 31, 2011, and requests to have his insurance coverage cancelled effective August 1, 2011. The file for the carriers ran July 28, 2011. Retroactive termination is not based on file notification to the carriers.

1. Allow the subscriber to cancel coverage effective August 1, 2011.
2. On the weekly file, notify the carriers of the retroactive cancellation of coverage.
3. Do not send COBRA as an available option because of the subscriber's request for an early effective date of cancellation.

Policy:

The plan must prescribe the circumstances under which election changes are allowed, based upon the federal guidelines. The changes can only affect salary not yet currently available, in other words, the changes can only be made on a prospective basis.

State Group Insurance participants are notified of their COBRA rights and responsibilities in the initial new hire package. If the subscriber fails to notify the plan of a divorce and the subscriber or ex-spouse has not paid the full COBRA premium for coverage, the plan's termination of coverage retroactive to the divorce is not considered to be a rescission of coverage. If the plan is notified within the COBRA enrollment window and the full back premiums are paid, the plan must allow the COBRA enrollment.

Health Care Reform Act SEC. 2712 Prohibition on Rescissions³

"A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not take back such plan or coverage with respect to an enrollee once the enrollee is covered under such plan or coverage involved, except that this section shall not apply to a covered individual who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Such plan or coverage may not be cancelled except with prior notice to the enrollee, and only as permitted under section 2702(c) or 2742(b)."

60P-2.003 Changes in Coverage⁴

(1) An employee enrolled in the Health Program may apply for a change to family coverage or individual coverage within thirty-one (31) calendar days of a QSC event if the change is consistent with the event or during the open enrollment period. (Per guidance from our tax attorney, a prospective change can be allowed to save both the participant and the state future deductions.)

(2) A retiree, surviving spouse or participant with continuation coverage enrolled with family coverage may apply to change to individual coverage at any time, however, those enrolled with individual coverage may apply for a change to family coverage within thirty-one (31) calendar days of the date of acquisition of or loss of other group coverage for any eligible dependent or during the open enrollment period.

For additional information or questions please contact the BenefitsGroup@justiceadmin.org.

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