Are employee assistance programs (EAP) subject to COBRA?

The key issue here is to determine whether or not the employee assistance program constitutes a group health plan. Employee assistance programs (EAP) are set up and maintained by the employer to offer counseling and/or advice to employees facing certain emotional or social problems. Typically, these programs are administered by an outside party or entity, like a third-party administrator (TPA), that isn't related to the company.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is a federal law enacted to protect the rights of individuals who would otherwise lose healthcare coverage. COBRA requires employers to offer covered employees and their covered dependents the opportunity to temporarily continue their health insurance at group rates when they're faced with losing the employers' coverage as a result of certain "qualifying events."

COBRA defines a group health plan as a plan that the employer maintains or supports, and which provides some type of medical care. The employer doesn't have to contribute any funding to a plan for it to be considered an employer-sponsored health plan.

**Example 1:** Cheryl Jones works for ACME Insurance Company. As an employee of ACME, Cheryl participates in the company's group health plan. She also is enrolled in ACME's voluntary dental plan. The premium for the voluntary dental plan is 100 percent paid for by the employees. In this case, both the health and dental plans are subject to COBRA. Even though ACME doesn't contribute to the dental plan, it's still considered "maintained" by the employer since ACME sponsors the plan. Thus, if Cheryl loses coverage under ACME's regular plan, ACME must offer Cheryl COBRA continuation coverage for the dental as well as group health plan.

Likewise, if your company's EAPs meet the definition of an employer-sponsored group health plan, they might be subject to COBRA. However, if the programs were mere referral services, they most likely wouldn't be subject to COBRA.

**Example 2:** Sarah Smith is an employee of XYZ Company. As a full-time employee of XYZ, Sarah participates in the company's medical and dental plans. Sarah's supervisor noticed a drastic change in Sarah's behavior and attendance. He brought his concerns about Sarah to the company's human resources manager. The HR manager scheduled a meeting with Sarah and suggested that she contact XYZ's employee assistance hot line if she was experiencing emotional or any other personal problems that were affecting her work.

Sarah contacts the employee assistance hot line. She tells the person who answers that she's suffering from depression. Sarah's connected to a trained and certified psychologist who renders advice to Sarah and schedules a follow-up appointment.

**Result:** In this case, XYZ's employee assistance program meets the criteria of an employer-sponsored health plan because she received counseling from a trained professional. If an employee in a similar situation visits a psychologist, the visit would be considered the same as a normal doctor's visit. On the other hand, if XYZ's employee assistance hot line merely referred Sarah to a list of psychologists in her area, the program wouldn't meet the criteria for a health plan.

For further guidance in this area, please obtain a copy of the Department of Labor's (DOL) advisory opinion # 91-26 A, dated July 19, 1991. DOL advisory opinions are NOT legally binding, but they do address questions received by the DOL and can be helpful for compliance purposes.

For more information, visit the Department of Labor at www.dol.gov and the IRS at www.irs.ustreas.gov.

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