

Are Employee Assistance Plans Subject to COBRA?

To determine whether an employer's employee assistance plan (EAP) is subject to COBRA, it is necessary to examine the definitions of group health plan and employee welfare benefit plan.

All group health plans are required to provide COBRA coverage. ERISA's definition of a group health plan is an "employee welfare benefit plan providing medical care to participants...directly or through insurance, reimbursement or otherwise." A group health plan subject to COBRA must meet both of the following criteria: it must qualify as an employee welfare benefit plan and it must provide medical care.

According to Section 3(1) of ERISA, medical care includes "medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, death." Although EAPs do not provide "traditional" medical care, they do offer doctor referrals, counseling for depression or anxiety, and alcohol and substance abuse advice and referrals. If an EAP provides only referrals to medical care providers, it is not considered an employee welfare benefit plan (and thus, not a group health plan subject to COBRA). However, if an EAP provides any form of counseling or advice related to medical care, the EAP may be subject to COBRA. For example, if a company's EAP has on-site counseling services and the counselor has a degree in psychology, the EAP is subject to COBRA. If an EAP is structured as a referral program staffed by individuals who are not trained counselors in

psychology, social work, etc., then medical benefits are not being provided, and the EAP is not subject to COBRA.

COBRA administration for EAPs can prove challenging. If an employee is using the EAP for marriage or legal counseling, these are non-medical benefits and would not be subject to COBRA. Another challenge is how to structure eligibility to the EAP. Many employers open the EAP to all employees regardless of whether or not they are enrolled in, or eligible for, the medical plan. This generous eligibility means that COBRA notices and COBRA election notices must be sent to all employees enrolled in the EAP even if they do not enroll in the medical group health plan.

What This Means for Counties

If you have an EAP that includes counseling services, be aware of the risk and administrative costs involved. EAPs with a medical care component are subject to statutory and regulatory requirements under ERISA, including COBRA.

For more information, contact CTSI at 303-861-0507.