

Bulletin 2003-05

TO: All Licensed Health Insurance Companies

FROM: Sandy Praeger
Commissioner of Insurance

SUBJECT: Kansas Continuation Law

DATE: August 7, 2003

From time to time, this office is involved in resolving disputes between insurers and employers or individual consumers concerning the provisions of the Kansas Continuation Law, K.S.A. 40-2209(i). These complaints have become frequent enough to indicate the need for a Bulletin reminding companies of the requirements of this Kansas law.

Companies often refer to state continuation laws as “mini-COBRA” or “state COBRA”, which may cause insurers to consider the requirements of such laws with a COBRA mindset; however, there are many provisions of the Kansas Continuation Law that are unlike COBRA.

- **Unlike COBRA**, the Kansas Continuation Law places the burden of continuation on the insurer, not the employer.
- **Unlike COBRA**, the Kansas Continuation Law provides continuation rights for consumers “...*whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety...*”. Therefore, if the entire group policy is cancelled, the individuals covered in the group are entitled to a continuation, subject to certain exceptions spelled out in the law.
- **Unlike COBRA**, the Kansas Continuation Law does not require a *new* carrier to assume the coverage of individuals on continuation when a group changes carriers. Because COBRA is a labor law, the individuals on COBRA continuation are the baggage of the employer, and the *employer* must ensure that COBRA participants are covered in the event that the employer changes carriers. The *employer* has no obligation when the continuation is not provided pursuant to COBRA, so the *insurer* who covered the individual when he/she left the group is not relieved of their continuation obligation.

- **Unlike COBRA**, the Kansas Continuation Law places the burden on the insurance company, not the employer, to issue notice of the individual's continuation and conversion rights, as spelled out in K.A.R. 40-4-36.
- **Unlike COBRA**, The Kansas Continuation Law states that the insured shall make payment of premium to the insurer, not the employer.
- **Unlike COBRA**, the provisions of the Kansas Continuation Law apply to all group policies, regardless of the size of the group, including associations, unions, multiple employer trusts, and any other group arrangement permitted under Kansas law.
- The provisions of the Kansas Continuation Law apply to group policies that are also subject to COBRA, to the extent that the participant has not received equal or better continuation rights under COBRA.
- The requirements of the Kansas Continuation Law are extraterritorial. Pursuant to K.S.A. 40-2215, certificates issued under out-of-state group policies are required to be filed with the Kansas Insurance Department, and may be disapproved if they are not in conformity with the provisions of article 22 of chapter 40 of Kansas Statutes Annotated. The Kansas Continuation Law is included within that article. Therefore, the provisions of the Kansas Continuation Law apply when a Kansas resident is covered under an out-of-state group, to the extent the individual is not entitled to equal or greater continuation rights in the state where the master policy is issued.

The requirements described above are not new and, in fact, most predated COBRA. There are many provision and limitations of the Kansas Continuation Law not described in this Bulletin, but the above points address areas of concern that seem to arise with increasing frequency. Companies whose administrative procedures are not in compliance with the above guidelines are asked to make the appropriate changes immediately.

NOTE: The continuation requirements for Health Maintenance Organizations are found at K.S.A. 40-3209, and for Nonprofit Medical and Hospital Corporations under K.S.A. 40-19c06.