ADMINISTRATIVE DIRECTIVE	TRANSMITTAL: 91 ADM-53
	DIVISION: Medical Assistance
TO: Commissioners of Social Services	
	DATE: December 27, 1991

SUBJECT: COBRA Continuation Coverage Program

SUGGESTED DISTRIBUTION:	Medical Assistance Staff Public Assistance Staff Adult Services Staff Fair Hearing Staff Legal Staff Staff Development Coordinators Third Party Resource Staff
CONTACT PERSON:	Questions concerning this Administrative Directive should be directed to your MA Eligibility County Representative by calling 1-800-342-3715, extension 3-7581 or your New York City Representative at (212) 417-4853. For PA questions, call Dottie O'Brien at 1-800-342-3715, extension 4-6853.
ATTACHMENTS:	Attachment I - Notice to Potential Qualifying COBRA Continuation Beneficiaries (available on-line) Attachment II - Notice of Action on Application/Benefit for Medical Assistance Payment of the COBRA Continuation Coverage Premium (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
91 ADM-27 87 ADM-40		360-3.2 360-4.6(a), 4.7(b) 360-7.5(h)	SSA 1902(a) (10)(F) & (u) SSL 104 SSL 367-a (1)(d)		COBRA 1985 Section 4713 of OBRA 1990

I. PURPOSE

This Directive advises social services districts of the policy and procedures for implementation of the COBRA Continuation Coverage Program for certain qualified beneficiaries.

II. BACKGROUND

A. COBRA CONTINUATION COVERAGE

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provided that employers with 20 or more employees who maintain a group health plan must offer employees and their dependents the option to elect continuation coverage under that plan after certain qualifying events that ordinarily result in the loss of coverage. There are six possible qualifying events:

- the death of the covered employee;
- the termination (except due to gross misconduct of the employee) or reduction in hours of the covered employee's employment;
- the divorce or legal separation of the covered employee from the employee's spouse;
- the covered employee's entitlement to Medicare;
- a dependent child losing dependent status under the requirements of the group health plan; and
- for a covered retiree whose employer files for Chapter 11 bankruptcy and continues to maintain a group health insurance plan.

COBRA continuation beneficiaries (CCBs) include:

- employees;
- spouses;
- dependent children; and
- retirees and their dependents or surviving spouses.

Thus, CCBs are allowed the option of purchasing health insurance at group plan rates upon the occurrence of qualifying events.

The CCB generally must elect COBRA continuation within 60 days of the date coverage ends because of a qualifying event, or the date of notice of the coverage option from the plan administrator, whichever is later. The plan must allow no less than 45 days from the date of the initial election to pay the premium for the period beginning the day coverage would otherwise have ended. Subsequently, the premium payment is considered to be timely if made within 30 days of the first day of the period (or longer if allowed under the plan). Failure to make timely payment of the premium will result in the termination of coverage. The CCB is allowed to make monthly, quarterly or semi-annual installments.

The qualifying event generally determines the duration of the CCB's coverage:

- 18 months for termination or reduction in hours (29 months if the CCB is determined disabled under Title II or Title XVI of the Social Security Act (Act) when employment terminates or hours are reduced);

- for the retiree's lifetime, if the employer has filed for Chapter 11 bankruptcy and maintains a group health insurance plan, and the CCB is not in receipt of Medicare benefits (36 months following the death of the retiree for the retiree's spouse and/or dependent children); and

- 36 months for other qualifying events.

COBRA continuation coverage, which generally begins on the date of the qualifying event, will be discontinued if:

- the CCB fails to make timely payment of any premium required under the plan;

- the employer ceases to provide any group health plan to any employee;

- the CCB becomes a covered employee under any other group health plan (if the group plan does not limit or exclude a pre-existing condition of the CCB) or becomes entitled to Medicare benefits; or

- the former spouse of a covered employee remarries and becomes covered under a group health plan (if the group plan does not limit or exclude a pre-existing condition).

The health insurance plan may require a CCB to pay both the employee's and employer's share of the premium cost plus administrative costs. However, the premium for COBRA continuation coverage may not exceed 102 percent (%) of the applicable premium for group health coverage and 150% of the applicable premium for months 19 through 29 for extended coverage for disabled individuals when employment terminates or

hours are reduced. The coverage offered to CCBs must be identical to coverage provided under the employer's group health plan for other beneficiaries.

If an option to convert the group health insurance plan to a private plan is available to similarly situated active employees, CCBs must also have conversion rights.

B. MEDICAL ASSISTANCE (MA) PAYMENT OF THE COBRA CONTINUATION PREMIUM

1. In accordance with Department Regulation 18 NYCRR 360-3.2(d), MA applicants/recipients (A/Rs) are required as a condition of eligibility to enroll or maintain enrollment in health insurance programs available through an employer, including COBRA continuation coverage, when determined to be cost effective. The MA program pays the premium, copayments and deductibles for such coverage.

2. In addition, Section 4713 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) added Section 1902(a)(10)(F) to the Act allowing states the option to provide for MA payment of the premium for COBRA continuation coverage on behalf of a qualifying CCB, regardless of MA eligibility, if:

   - coverage is available through an employer with 75 or more employees;

   - the savings in expenditures to the MA program as a result of MA coverage are likely to exceed the amount of the premiums;

   - the income of the qualifying CCB, using the Supplemental Security Income (SSI) budgeting methodology, does not exceed 100% of the federal poverty line applicable for the appropriate SSI household size;

   - the resources of the qualifying CCB, using the SSI budgeting methodology, do not exceed twice the SSI resource level; and

   - the qualifying CCB meets, with the exception of the categorical requirements of the SSI or Aid to Families with Dependent Children (AFDC) programs, the nonfinancial requirements of eligibility for MA.

   Chapter 165 of the Laws of 1990 added Section 367-a(1)(d) to the Social Services Law (SSL) mandating this option for New York State. Department Regulation 18 NYCRR 360-7.5(h) has been revised to implement the provisions of SSL 367-a(1)(d).

III. PROGRAM IMPLICATIONS

A. DEFINITIONS

1. CCB - COBRA Continuation Beneficiary. An individual who may elect to continue a group health plan maintained through an employer of 20 or more employees due to certain events.

2. CCP - COBRA Continuation Coverage Program. MA payment of the premium for COBRA continuation coverage on behalf of certain CCBs.

3. COBRA Continuation Coverage. Group health plan coverage maintained by a CCB following the occurrence of certain events.

4. Option period. The timeframe for election to continue group health plan coverage following the occurrence of certain events.

5. Qualifying CCB. A CCB who meets the criteria for MA payment of the COBRA continuation coverage premium.

B. ELIGIBILITY FOR THE COBRA CONTINUATION COVERAGE PROGRAM (CCP)

In order for a person to be eligible for the CCP and thus become a qualifying CCB, certain criteria must be met.

1. COBRA continuation coverage must be available through an employer with 75 or more employees.

2. The COBRA premium is projected to be less than the cost of equivalent MA coverage for the CCBs in the household, using the procedures for determining cost effectiveness which are outlined in Attachment II of 87 ADM-40, "Third Party Resources Detection and Utilization".

3. The income of the CCB, using SSI budgeting (including all appropriate exemptions and disregards), does not exceed 100% of the federal poverty line for the appropriate SSI household size. Medical and remedial care expenses are not deducted in determining income.

4. The resources of the CCB, using SSI budgeting (including all appropriate exemptions and disregards), do not exceed twice the SSI resource limit. Currently, twice the SSI resource limit is $4,000 for a household of one, and $6,000 for a couple.

5. The CCB meets the general nonfinancial requirements/ conditions of eligibility for MA, such as filing of an application for MA, furnishing a social security number, proving citizenship and residency, and assigning rights.

However, the CCB does not have to meet the categorical requirements of either the SSI or AFDC programs.

C. BUDGETING METHODOLOGY

1. If the adult CCBs in the household are determined to be eligible, the CCBs under age 18 in the household will be automatically determined to be eligible for the CCP. The needs and income of children under age 18 are taken into consideration through the process of allocation of parental income.

   If the adult CCBs in the household are determined not to be eligible, then a separate eligibility determination must be made for the CCBs under age 18. Under SSI budgeting for a child under age 18, the needs and income of the parent(s) and any other child(ren) under the age of 18 are taken into consideration through the process of deeming and allocation. When determining CCP income eligibility for more than one child under the age of 18 in a household, a separate SSI budget must be calculated for each child. In each child's budget, the other child(ren) is to be considered non-SSI-related for purposes of allocation. However, in determining CCP resource eligibility for more than one child under the age of 18 in a household, the deemed parental resources are equally distributed among the children. When only the CCBs under age 18 in the household are eligible, determine the cost effectiveness of the premium based only on the MA expenditures for an equivalent set of services for the eligible CCBs under age 18.

   A separate eligibility determination must be made for a CCB who is a child at least 18. An unmarried individual between 18 and 21 years of age is treated as a single adult using SSI budgeting. The income and resources of parents and siblings in the household are not considered in determining eligibility for the CCP. Determine cost effectiveness of the premium for the household based only on the qualifying CCBs.

   NOTE: Federal financial participation is available for MA expenditures for those instances where it is necessary to cover a nonqualifying CCB in order to cover a qualifying CCB.

2. There are situations where eligibility for the CCP must be determined only for the dependent child:

   a. the adult CCBs are not eligible for the CCP;

   b. there are no adult CCBs in the household of the dependent child; or

c. the dependent child becomes a CCB due to losing dependent status under the requirements of the group health plan.

D. COBRA CONTINUATION PREMIUM PAYMENT

1. This new eligibility group is entitled to MA payment only for the COBRA premium. MA payments are not available for coinsurance, deductibles and other cost sharing obligations under the group health plan.

   Home Relief (HR) and HR-related MA recipients meet the eligibility criteria for the CCP. Therefore, federal participation is available for the COBRA premium payment for HR and HR-related MA recipients who are qualified CCBs.

2. The qualifying CCB must elect continuation of the coverage within the 60-day option period. Failure to make timely payment will result in the termination of coverage. Therefore, if the option period has not elapsed, the decision to elect continued coverage should not be delayed pending receipt of documentation verifying the A/R is eligible for the CCP.

   In the event that the documentation does not support eligibility, the premium payment must be discontinued prospectively. The social services district may request voluntary repayment of the premium amount, or may pursue recovery of the payment under the provisions of SSL Section 104.

IV. REQUIRED ACTION

Social services districts must take the following actions to determine the eligibility of a potential qualifying CCB for MA payment of the COBRA continuation coverage premium.

A. INITIAL INTERVIEW

1. Conduct a face-to-face interview with the individual(s) requesting a qualifying CCB determination.

2. Obtain information on all group health plans available to the individual, including COBRA coverage effective dates, exclusions to enrollment, the services covered under each policy, and premium amounts. If the individual does not have all the necessary information, contact the employer.

3. Verify that the individual is a CCB.

4. Verify the dates of the open option period.

5. If the CCB has not already made the election to continue the coverage, advise the CCB that the election must be made in order for MA to pay the premium.

B. NONFINANCIAL ELIGIBILITY

All policies and procedures relating to MA applications/ recertifications contained in Department Regulations 18 NYCRR 360 apply to qualifying CCBs except for those relating to category.

C. FINANCIAL ELIGIBILITY

1. Income/Resource Standards

Applicants for qualifying CCB status must have their financial eligibility determined using the SSI budgeting methodology. The individual's net income and countable resources must be equal to or less than the following income and resource standards.

Income Standards*

Household Size	One	Two
Net Annual Income	$6,620	$8,880
Net Monthly Income	$ 551	$ 740

Resource Standards

Household Size	One	Two
	$ 4,000	$ 6,000

*100% of the federal poverty line effective July 1, 1991.

As with other SSI-related individuals, qualifying CCB applicants may set aside up to $1,500 as a burial fund ($3,000 for a couple).

2. Budgeting Guidelines

a. All SSI-related income and resource exemptions and disregards must be applied.

b. Allocation and deeming must be used when appropriate.

c. Net income and resources must be compared to a household size of one or two. The provisions of 91 ADM-27 "Federal Compliance: MA Eligibility Changes Relating to Resource and Income Exemption Standards and Household Size" regarding household size for SSI-related A/Rs must be used when determining eligibility for MA payment of COBRA premiums.

d. Qualifying CCB applicants may not spend down income or resources to gain eligibility for the CCP.

D. CASE PROCESSING

Social services districts must process the applications of qualifying CCBs who meet the financial and nonfinancial criteria of this Directive using the following guidelines and procedures:

1. Effective Date

The effective date of MA eligibility under qualifying CCB provisions is the first day of the month the individual is determined to be eligible as a qualifying CCB. This includes the three-month retroactive period prior to the month of MA application, but in no instance prior to July 1, 1991.

2. Qualifying CCB Benefits

Unless the qualifying CCB is also eligible for PA or MA, the qualifying CCB is entitled to MA payment of the COBRA premium only. MA cannot pay any coinsurance, deductibles, or other costs of the coverage. Payment of these costs remains the responsibility of the individual.

3. Open Option Period

Social services districts must work within limited timeframes for the election and payment of COBRA continuation coverage. Social services districts should, therefore, revise local procedures to determine as quickly as possible that the A/R is a CCB, in an open option period.

Social services districts must review all applications for COBRA continuation coverage potential, regardless of whether the MA payment will be for a PA, MA-Only, or a CCP A/R. For any instance where the option period is still open, if the available information indicates that individual(s) meets the requirements of eligibility under the CCP, the determination to pay the premium must not be delayed pending documentation verifying eligibility for the CCP, PA, or MA. Authorization of expedited premium payments must be limited to three months.

Expedited premium payments are claimed without federal financial participation. Once the case is determined eligible, claiming adjustments must be made on Schedule E.

4. Claiming

CCP payments are claimed on the Schedule E (DSS-157), line 24 (Health Insurance Premiums), column 7 (All Other) for Federally Participating payments, and column 11 (All Other) for Federally Non-Participating payments.

5. HR and HR-related MA-Only Undercare Cases

To maximize federal financial participation, social services districts should review all HR and HR-related MA undercare cases with health insurance coverage at the next client contact. If the health insurance is COBRA continuation coverage available through an employer with 75 or more employees, federal financial participation is available for the premium payment.

6. Recertification/Change in Circumstances

a. Qualifying CCB cases must be recertified at least once every twelve months.

b. Recipients must be instructed to report changes which may affect eligibility, such as: an increase in income and/or resources; former spouse of a covered employee remarries; and/or loss of COBRA coverage.

7. Discontinuance

a. Adequate notice of discontinuance of the premium payment must be provided under the following circumstances:

(1) in cases accepted for payment of the premium pending the receipt of documentation and the documentation does not support eligibility; and

(2) when the individual(s) is no longer a CCB (therefore there is no premium to be paid).

b. Timely and adequate notice of discontinuance of the premium payment must be provided in all other instances.

8. Notice

Attachment I, "Notice To Potential Qualifying COBRA Continuation Beneficiaries" should be made available to any

individual requesting information concerning the CCP, and to any individual who has health insurance coverage as the spouse or dependent child of a covered employee.

Upon determining eligibility for the CCP, the social services district must provide the individual(s) with a mandated "Notice of Action on Application/Benefit for Medical Assistance Payment of the COBRA Continuation Coverage Program" included in this Directive as Attachment II. The mandated notice must be reproduced by social services districts without modification until such time as it becomes available from this Department.

9. Premium Payment

The premium payment may be made to the carrier or the employer. When the COBRA premium is paid through a payroll deduction, reimburse the employee. Reimbursement may be made to an eligible CCB for COBRA premiums paid by the CCB for an eligible coverage period for up to three months prior to application, but in no event for a coverage period prior to July 1, 1991.

V. PUBLIC ASSISTANCE IMPLICATIONS

A. ACTIVE CASES

To maximize federal financial participation, social services districts should review all HR and HR-related MA undercare cases with health insurance coverage at the next client contact. If the health insurance is COBRA continuation coverage available through an employer with 75 or more employees, federal financial participation is available for the premium payment and the Payment Type Code "L5" must be used. (See Systems Implications.)

B. DENIALS OR CASE CLOSINGS

In order to carefully consider the potential eligibility of all A/Rs under this policy, PA workers should understand the magnitude of these changes. Previously, the rule had been that a single person between the ages of 21 and 65, who is not certified blind or disabled and not eligible for PA, is not eligible for MA. Now such persons may be eligible for assistance to pay health insurance premiums if the premium is for COBRA continuation coverage available through an employer with 75 or more employees.

A PA worker must refer PA closings and denials for a separate MA determination (Rosenberg) regardless of age, case category or family composition if the A/R is a CCB or is a potential CCB. Because a separate budgeting methodology will be used in these cases, an MA worker must make the Rosenberg determination.

VI. SYSTEMS IMPLICATIONS

A. WMS - UPSTATE

Effective October 28, 1991, WMS support is available to enable Benefit Issuance Control System (BICS) to pay health insurance premiums of individuals determined eligible for the CCP.

1. PA and MA Recipients

Payment Type Code L5 (HEALTH INSURANCE CONTINUATION - 100% POVERTY) will enable districts to pay the COBRA continuation coverage premiums of PA and MA recipients when such coverage is available through an employer with 75 or more employees. However, for Case Type 20, the system will require that the case contain at least one individual with MA Coverage Code 01, 02, 07-10, 13-17, 30 or 31. Also, use of this payment code for COBRA premium payments will result in federal participation, even for HR and HR-related MA recipients, regardless of the Individual Categorical Code entered on screen 3 of WMS.

2. Qualifying CCBs

For Case Type 20, MA Coverage Code 17 (HEALTH INSURANCE CONTINUATION ONLY), in conjunction with Payment Type Code L5, will enable COBRA health insurance premium payments to be made for qualifying CCBs. Entry of Coverage Code 17 is allowed only for Case Type 20 individuals, and must be accompanied by entry of Payment Type Code L4, L5 or L6. (See the recently issued Administrative Directive "AIDS: Health Insurance Continuation Program for Persons with AIDS" for information regarding the use of Code L4). Coverage Code 17 recipients are entitled to MA payment of the COBRA premium only and will receive no other MA benefit.

3. PA, MA and CCP Applicants

If eligibility is pending for individuals who appear to qualify for PA, MA or the CCP and the option period is due to expire before documentation supporting PA, MA or CCP eligibility can be obtained, then expedited payment must be made using Case Type 20, Coverage Code 17 and Payment Type Code L6.

Payment Type Code L6 (HEALTH INSURANCE CONTINUATION - EXPEDITED PAYMENT) will enable districts to expedite the payment of health insurance premiums in instances where documentation verifying eligibility for CCP is pending. This Payment Type Code is permitted for Case Type 20 only if the case contains at least one individual with MA Coverage Code 01, 02, 07-10, 13-17, 30 or 31. Also, the code should only be used when delays in making payments would result in failure to meet the health insurance option period deadline. Use of this payment code results in FNP claiming.

4. MA Spenddown Cases

CCP premium payments via Payment Type Code L5 or L6 are not allowed for a case when the current coverage code is 06 (Provisional). Therefore, when a determination is made that an individual eligible for CCP via MA Coverage Code 17 may also be potentially eligible for one-month outpatient coverage or six-month inpatient coverage via the excess income program, Coverage Code 17 should be initially authorized, rather than 06. When the monthly or six-month excess is met, districts should enter Coverage Code 02 (Outpatient Coverage) or 01 (Full Coverage), respectively, for the period that the spenddown has been met. If the Authorization To Date of the transaction containing the initially entered Coverage Code 17 extends beyond the 02 or 01 coverage period, WMS will generate Coverage Code 17 with a Coverage From Date equal to the Authorization To Date, as is currently done with Coverage Codes 06 and 09.

5. Screen 6 Edits

Screen 6 edits for Payment Type Code L5 and L6 are similar to those for Payment Type 24 (Health Insurance Premium), with the following exceptions:

-- L5 requires Special Claiming Category Code V (All Other-FP);

-- L6 requires Special Claiming Category Code R (All Other-FNP);

-- The Premium Payment Date cannot precede 07/01/91;

-- Entry of Code L5 or L6 is permitted for Case Type 11, 12, 14, 16, and 17 cases, as well as for Case Type 20 cases containing at least one individual having MA Coverage Code 01, 02, 07-10, 13-17, 30 or 31.

B. WMS - NYC

Instructions for NYC procedures are forthcoming.

C. MBL

Effective October 7, 1991, MBL support is available to determine financial eligibility for the CCP. MBL Transmittal 91-4 contains the procedures and instructions for calculating CCP eligibility on MBL.

VII. EFFECTIVE DATE

This Directive is effective January 1, 1992, retroactive to July 1, 1991.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

NOTICE TO POTENTIAL QUALIFYING COBRA CONTINUATION BENEFICIARIES

Are you an employee or the spouse or child of an employee who has health insurance coverage through an employer?

An employee of an employer with 20 or more employees, the employee's spouse and employee's dependent child(ren) have the right to decide to continue the health insurance coverage at the group plan rate in the event of:

- the death of the covered employee;
- the termination (except due to gross misconduct of the employee) or reduction in hours of the covered employee's employment;
- the divorce or legal separation of the covered employee from the employee's spouse;
- the covered employee's entitlement to Medicare;
- a dependent child losing dependent status under the requirements of the group health plan; and
- the filing for Chapter 11 bankruptcy by the employer for a covered retiree if the employer maintains a group health plan.

You can continue the coverage at the group plan rate for:

- 18 months for termination or reduction in hours (29 months if the COBRA beneficiary is determined disabled under Title II or Title XVI of the Social Security Act (Act) when employment terminates or hours are reduced);
- the retiree's lifetime, if the employer has filed for Chapter 11 bankruptcy and maintains a group health plan, and the retiree is not entitled to Medicare benefits (36 months following the death of the retiree for the retiree's spouse and/or dependent children); and
- 36 months for other qualifying events.

If you are eligible for Public Assistance or Medical Assistance, Medical Assistance will pay your premium, coinsurance, deductibles, and other expenses of the group health insurance, as long as the coverage is determined to be cost effective.

If you are <u>not</u> eligible for Public Assistance or Medical Assistance, you still may be able to have Medical Assistance pay the amount of your premium.

MA WILL PAY THE PREMIUM UNDER THE COBRA CONTINUATION COVERAGE PROGRAM IF:

- coverage is available through an employer with 75 or more employees;
- the premium is cost effective;
- your income after certain deductions is not more than:
  - $551 for an individual*
  - $740 for a couple*

  * 100% of the federal poverty level as of July 1, 1991;
- your countable resources (after certain deductions, such as a $1,500 burial fund for each spouse), are not more than $4,000 for an individual or $6,000 for a couple; and
- you meet certain other requirements such as: completing an application for MA, providing a social security number, and proving citizenship and residency.

You have approximately 60 days to decide to continue the coverage after coverage ends because of a qualifying event. The premium payment has to be made approximately 45 days after you choose to continue the coverage. If the premium is not paid in a timely manner, the coverage will end.

It is important to contact your social services department before the 60-day option period ends. You must decide to continue the coverage before the option period has ended.

If you expect to have trouble paying for this health insurance coverage, contact your social services department immediately to apply for the COBRA Continuation Coverage Program.