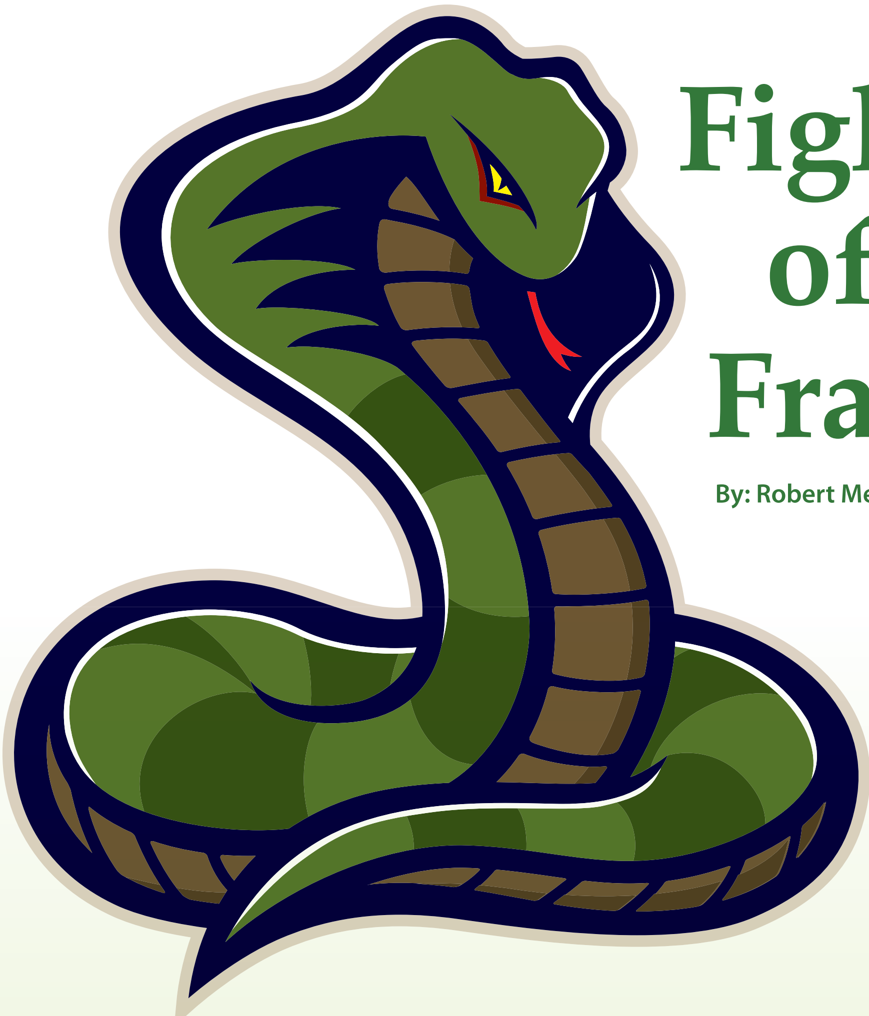

Fight the Bite of COBRA Fraud

By: Robert Meyers

Consider this scenario – John is a long-time employee of a manufacturing company that pays for the entire cost of health coverage for employees and dependents. He divorces June, his wife. In the divorce decree, the court makes John responsible for his wife's health insurance for the next 24 months. John's wife experienced a COBRA-qualifying event - she lost coverage due to the divorce and is therefore entitled to continue to participate in the plan through COBRA. Even though John and June hate each others' guts, they hate the high cost of COBRA even more. So, John decides not to report the divorce to his employer and leaves June on his plan as a covered dependent. By not accurately reporting his marital status to the HR department of the company, John and June are not only taking advantage of benefits for which June is not entitled, they are also committing fraud.

In the past, COBRA fraud scenarios like this one were few and far between. Today, they're becoming more prevalent due to the economic downturn and financial desperation. Some experts in the industry estimate that 5 to 15 percent of all covered dependents may be ineligible for COBRA. A high percentage of ineligible dependents are spouses who aren't really spouses. In many cases, they're no longer eligible due to unreported divorce or they're being reported as married when in reality they're just living together.

For employers and employees, it's another "riders on the plan" situation. Ineligible COBRA dependents drive up administration costs, claims costs, and employer liability. These factors adversely affect company profits and create a trickle-down effect in the form of slimmer benefits for the rest of the employee population.

For employers, monitoring participant marital status reporting is tricky. Because of potential discrimination and/or privacy issues, employers must avoid interrogating employees or participants about their spousal status. Before taking any action, get your employment attorney or your COBRA administrator involved. In addition, be aware that state COBRA rules may even treat spouses differently. These variances cause even more confusion and noncompliance. For example, there's a law in Illinois that says if you are age 55 or older at the time of divorce, the maximum period of coverage extends (if needed) until the former spouse is eligible for Medicare. Furthermore, COBRA dependent eligibility is not spelled out very well in the Affordable Care Act. Nobody knows yet how spouse issues will be decided in the future.

So what should employers do to solve this problem?

1. **Incorporate spouse-specific exit communication.** Consider including a COBRA notice summary sheet as part of your exit paperwork. It can help prepare employees for the COBRA information that will be sent to them by your COBRA administrator. In that paperwork, specify who is eligible for COBRA and highlight potential violations.

   In addition, ask your COBRA administrator to send a dependent acknowledgement form on your behalf. In a nutshell, it says, "Here's the information we have on file. Please verify the accuracy of this information and let us know if there have been any changes." The form also requires a signature and date. It's a proactive and non-confrontational way to address the situation and provide an easy corrective action.

2. **Audit your carrier invoices carefully.** Employers should account for everyone on carrier bills and validate each person on a monthly basis. If an employer doesn't know who the COBRA participant is or why the participant is listed on the bill, he or she must find out. Don't just take the insurance carrier's word for it. The carrier may have made a mistake and inadvertently left someone on the bill after being instructed to remove that individual. Even when there's not fraud, mistakes happen. That's why it's a good idea to reconcile participants regularly and pay close attention to spouses as dependents.

3. **Consider a private audit.** If you want to invest time and effort in fraud prevention, or if you have particular concerns, consider a private auditor, or a more formalized dependent audit. Dependent auditors will send each participant an affidavit, similar to the acknowledgement form. The affidavit states that if the information is true, the participant should sign the document. If the participant signs it and communicates incorrect information, he or she can be prosecuted.

As an employer, COBRA fraud should be on your business radar. In addition to the spouse issues discussed above, watch for other COBRA problem areas, such as participants who send in their paperwork but never submit payment, and dependents who age out. By learning about potential COBRA problem areas and taking a few proactive steps, employers can minimize the risk of overpayment. Why would any of us waste money during times like these?

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