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COBRA BASICS

About this COBRA Reference Guide

We designed this piece to be an easy-to-use reference tool for the most important aspects of COBRA. The rules and regulations governing COBRA continuation coverage are extensive and this overview does not contain all of the information about any part of COBRA law. It is simply a handy tool for when you need a quick reminder or a starting point for deeper learning.

COBRA In General

COBRA is an acronym for the Consolidated Omnibus Budget Reconciliation Act of 1985. This federal law requires employers sponsoring group health plans to offer certain individuals, who would otherwise lose their group health plan coverage as a result of a specific event (such as employment termination or certain changes in family status), the opportunity to continue group health plan coverage for a limited period of time at applicable group rates.

Employers Subject to COBRA

Generally, an employer is subject to COBRA if the employer offers a group health plan. There are a few exceptions:

1. Small employers with fewer than 20 employees
    a. Fewer than 20 employees on 50 percent or more of the typical working days in the preceding calendar year
        - **Employees** include all full-time and part-time common-law employees. Part-time employees are counted as a **fraction of an employee**, equal to the number of hours a part-time employee works divided by the number of hours required to qualify as **full time**.

    b. Many states have adopted laws similar to COBRA that provide continuation coverage to the employees of small employers. Please review the laws of your state for more information.
2. Church plans, as defined in Internal Revenue Code Section 414(e).
3. Federal government plans.

Controlled Groups

Two or more employers that meet certain common ownership levels are deemed to be members of a **controlled group**. All of the employers within a controlled group shall be treated as a single employer and the number of employees of each employer will be combined for purposes of determining if the company is subject to COBRA.

Note: *A U.S. subsidiary of a foreign corporation with fewer than 20 employees is subject to COBRA if the controlled group has 20 or more employees worldwide.*

Plans Subject to COBRA

For COBRA purposes, a group health plan is any plan maintained by an employer to provide health care benefits to employees, former employees, spouses, or dependents. The types of plans subject to COBRA include:

- Medical, dental, and vision
- Prescription drug plans
- Health FSAs,HRAs, and executive reimbursement plans

Note: *There are special rules for these types of plans that are outside the scope of this COBRA Reference Guide. Before taking any action related to these plans and COBRA, you must seek out more information.*

- Certain Employee Assistance Plans (EAPs), wellness programs, cancer policies, and employer-sponsored drug and alcohol treatment programs and health clinics (depending on the type of benefits offered)

COBRA does not apply to health savings accounts (HSAs), long-term care policies, life insurance, disability insurance, or other types of ancillary insurance that are not group health plans.

Qualifying Events

A qualifying event occurs when one of the events listed below causes a loss of coverage under the terms of the group health plan.

For the employee, spouse, and dependents:

- Voluntary or involuntary termination of employee (except for "gross misconduct," which is undefined in the regulations)
- A reduction in hours of employment that results in the loss of benefits or an increase in premiums or contribution

For spouse and dependents only:

- Divorce or legal separation from employee
- Loss of dependent child status
- Death of covered employee/retiree
- Employee entitlement to Medicare

Note: *An employee's entitlement to Medicare is rarely a qualifying event because the Medicare Secondary Payer (MSP) rules generally (but not always) prohibit an employer from terminating an active employee's coverage due to Medicare entitlement. When there is no loss of coverage, a qualifying event has not occurred.*

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Qualified Beneficiaries

Under COBRA, qualified beneficiaries have special rights that are not available otherwise. To be a qualified beneficiary, an individual must be covered under the plan the day before the qualifying event occurs and be one of the following:

- The covered employee
- The covered spouse
- A covered dependent
- A child born to, or placed for adoption with, the covered employee during a period of COBRA coverage

Prior to the Supreme Court ruling in 2013 overturning the Defense of Marriage Act, domestic partners and same sex married partners were not considered qualified beneficiaries under COBRA. Today, a legally married same sex partner is entitled to all of the same benefits as any other spouse. Domestic partners are recognized as spouses if they are legally married. If an employee is not legally married, the domestic partner is not considered a spouse and is not eligible for COBRA.

Covered employees are:

- Any employee or former employee covered under the group health plan
- Agents and independent contractors covered by the group health plan
- Corporate directors covered by the group health plan
- Any covered employees defined by Section 401(c) (1) (self-employed)

Qualified beneficiaries must be treated the same as "similarly situated non-COBRA beneficiaries." This means that qualified beneficiaries have all of the same rights as active employees within the same employee class and/or category. Therefore, qualified beneficiaries can add family members during a plan's open enrollment period or when HIPAA special enrollment rights apply. Any individuals added by these methods are covered under COBRA but are not qualified beneficiaries and do not have separate election rights. If the qualified beneficiary who chose to cover these individuals later loses COBRA coverage, the coverage for these individuals also ends.

COBRA Continuation Coverage

COBRA coverage must be identical to the coverage available to "similarly situated beneficiaries" (employees in the same class and/or category) under the plan that provided coverage to the qualified beneficiary. Typically, this is the same coverage the qualified beneficiary had the day before the qualifying event. This coverage cannot be reduced in any way or require proof of insurability.

Qualified beneficiaries must be given all of the same open enrollment rights and options given to active employees. Any open enrollment materials provided to active employees must also be provided to qualified beneficiaries.

If an employer modifies coverage for active employees, the same modifications apply to the corresponding COBRA continuation coverage (e.g., the employer changes insurance carriers or changes from an HMO to a PPO).

Duration of COBRA Coverage

Generally, the maximum coverage period (the period of time that COBRA continuation coverage is available) is 18 months for employee qualifying events (termination and reduction of hours) and 36 months for spouse and dependent qualifying events. Federal COBRA also includes an 11-month disability extension for individuals who meet certain requirements. Coverage may also be extended through the multiple qualifying event rule, the Family Medical Leave Act (FMLA), and state insurance laws.

Multiple Qualifying Events

If an original qualifying event is a termination or reduction of hours and is followed by a second qualifying event within the initial 18-month coverage period, the maximum coverage period for the affected spouse and dependents is 36 months, measured from the same starting date of the 18-month coverage period. The second qualifying event must be the death of the covered employee, the divorce or legal separation of the covered employee, or the loss of dependent child status. This rule only applies if the second qualifying event would have caused a loss of coverage under the terms of the plan if this event had occurred first.

Early Termination of COBRA

COBRA continuation coverage may be terminated "early" (i.e., before the end of the maximum coverage period) if a qualified beneficiary voluntarily requests to end coverage or fails to make timely payment. Continuation coverage may also be terminated early when the qualified beneficiary first becomes covered under any other group health plan, including Medicare entitlement, but only if the other plan does not contain any pre-existing condition exclusion or limitation that can be applied to the qualified beneficiary.

Note: *Medicare entitlement requires that an individual has reached age 65 and has applied for, or is receiving, Medicare benefits.*

COBRA continuation coverage will end early in the event that the employer terminates all group health plans for all active employees.

A Special Note about Other Coverage

A qualified beneficiary can have both COBRA continuation coverage and other group health plan coverage (including Medicare) at the same time, so long as the other coverage was in place prior to the election of COBRA coverage. COBRA continuation coverage can only be terminated when the individual first becomes covered under another group health plan or Medicare after COBRA coverage has already been elected.

Electing COBRA Coverage

Qualified beneficiaries have separate election rights, meaning that coverage configurations can be customized because each qualified beneficiary must be treated the same as an active employee from the same class and/or category.

A qualified beneficiary must be given a 60-day election period, measured from the later of the date coverage ends or the date the COBRA election notice is sent. An election is valid as long as it is made prior to the expiration of the 60-day election period. If the election notice is mailed, the election is "made" when the qualified beneficiary sends the notice to

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the plan administrator.

Paying for COBRA Coverage

In the absence of any severance or other agreement to the contrary, qualified beneficiaries must pay for COBRA continuation coverage. A group health plan may charge 102 percent of the applicable premium during standard COBRA coverage periods and 150 percent of the applicable premium during an 11-month disability period.

For insured plans, the **applicable premium** is the cost to maintain the plan for similarly situated employees. For self-insured plans, the applicable premium is the cost to maintain the plan for similarly situated employees as determined by an actuary (or similar methods).

Group health plans must allow qualified beneficiaries to pay for coverage on a monthly basis. To maintain coverage, qualified beneficiaries must make timely payments for all premiums due. **Timely payments** are those made within 45 days after the election date (for the first payment) and within 30 days after the first day of each subsequent coverage period (or the later of any grace period given to the employer by the carrier or any grace period allowed similarly situated employees). A payment is "made" when it is sent by the qualified beneficiary.

Insignificant Underpayments

Group health plans must accept a short payment if the payment falls within "insignificant underpayment" guidelines. These guidelines specify that an underpayment is insignificant if the shortfall is no greater than the lesser of $50 or 10 percent of the required amount. Insignificant underpayments give rise to a new 30-day grace period that begins upon receipt of payment. The amount of the shortfall must be paid within this 30-day grace period or coverage may be canceled.

Rate Increases

Rate increases may be passed on to qualified beneficiaries, but premium amounts must be fixed for each 12-month rate determination period, which is set at the plan level and applies to all qualified beneficiaries, regardless of when their specific coverage period begins.

The amount charged may only be increased during the 12-month rate determination period under the following circumstances:

1. Increasing the rate from 102 percent to 150 percent during an 11-month disability extension period
2. If the plan was charging less than the maximum rate permitted, an adjustment can be made to bring the rate to the 102 percent or 150 percent maximum allowed rate
3. If the qualified beneficiary initiates a permissible change in coverage that results in more expensive coverage (e.g., adding a spouse or child)

Required Notices

Under COBRA, an employer (or the employer's designated plan administrator) is required to provide notices to certain individuals when specified events occur.

General Notice

Formerly known as the Initial Notice, the General Notice informs covered individuals of their continuation rights under COBRA upon the future occurrence of a qualifying event (DOL regulations specify a 90-day notification time frame). This notice must be sent when the employer first becomes subject to COBRA, when a new employee (and spouse, if any) becomes covered under the plan, or when an employee adds a spouse to plan upon marriage or open enrollment. The General Notice includes basic information about COBRA and informs the employee and spouse of their responsibility to notify employer when certain events occur.

Election Notice

The Election Notice is given to qualified beneficiaries upon the occurrence of a qualifying event. It includes information about the:

- date and type of qualifying event
- loss of coverage date
- the election period expiration date
- type(s) of coverage available
- premium amounts and due dates
- explanation of separate election rights
- length of the continuation coverage period
- reasons why coverage may be terminated
- name, address, and phone number of the plan administrator

This notice must be provided within 14 days of the qualifying event. If the employer and plan administrator are not the same, the employer has 30 days to notify the plan administrator that a qualifying event has occurred and the plan administrator then has 14 days in which to provide the Election Notice.

Notice of Early Termination

Whenever a qualified beneficiary loses COBRA continuation coverage for any reason other than reaching the end of the maximum coverage period (18 or 36 months, depending on the qualifying event), the plan must provide a notice that identifies the date of coverage termination and the reason for the loss of coverage.

Notice of Unavailability

If a plan administrator receives notice that a qualifying event has occurred (or a notice of a second qualifying event), or a notice of disability, and determines that the individual described in the notice is not entitled to COBRA coverage (or to an extension of the maximum COBRA coverage period), then the administrator must provide a Notice of Unavailability to the individual.

Qualified Beneficiary Requirements

Qualified beneficiaries have 60 days to notify the plan the administrator whenever there is a loss of dependent child status or there is a change in marital status (i.e., legal marital separation or divorce). Qualified beneficiaries also have 60 days to notify the plan administrator of the Social Security Administration's determination of disability (where applicable). In the event a disabled qualified beneficiary is later determined to no longer be disabled, the qualified beneficiary must notify the plan administrator within 30 days of the determination.

***ACCURACY NOTICE**: We use reasonable efforts to ensure the information presented is accurate as of the date of publication (February 2018). However, this should not be considered legal, accounting, or other advice. Information is subject to change at any time. Before taking any action, please consult with your legal counsel or other qualified professional to ensure you are complying with all of the Internal Revenue Service federal guidelines on COBRA and any state laws affecting the continuation of employee benefits.*