



# COBRA: Compliance Guidelines

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Many employers provide health insurance for their employees, and that is a very important benefit because of the rising cost of health care. Group health insurance plans are typically less expensive than are individual plans, so even if employees must pay large percentages of the premiums, the policies are valuable.

## **ERISA**

Most employers in the US who sponsor group health plans must abide by the Employee Retirement Income Security Act of 1974 (ERISA), which protects employee benefits by setting certain standards.

## **COBRA**

In 1986, the US Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA), which amended ERISA, the Public Health Service Act and the Internal Revenue Code. The COBRA law requires most businesses to allow those covered by employer-sponsored group health plans to temporarily continue their coverage that would otherwise end because of certain situations called qualifying events. Those under the COBRA law include covered employees, past employees, spouses, ex-spouses and dependent children.

### **Qualifying Events**

Qualifying events include incidents like an employee's death, divorce, decrease in

working hours, eligibility for Medicare, legal separation, a child losing the status of a dependent or an employee's termination, unless the termination is because of gross misconduct.

### **Qualified Beneficiaries**

Businesses under the COBRA law must provide the continuation coverage for qualified beneficiaries after the occurrence of a qualifying event. An individual covered by a group health plan the day before the occurrence of a qualifying event is a qualified beneficiary if he or she is an employee, an employee's dependent child or an employee's spouse or ex-spouse. During a period of continuation coverage, a child born to a covered employee or placed with a covered employee for adoption is also a qualified beneficiary. In addition, independent contractors, directors and agents may be qualified beneficiaries if they are participants in the group plan.

### **Employers Subject to the COBRA Law**

Private-sector employers who maintain group health plans and had over 20 employees on more than half of their usual business days the preceding year are subject to the COBRA law. Plans provided by state or local governments are subject to the law as well. However, the federal government, churches and some church organizations are not subject to the COBRA law.

## **Notices**

Businesses with group health plans under the COBRA law must provide detailed notices to their covered employees and others describing the COBRA rights to which those covered are entitled.

## **Summary Plan Description**

The group health plan's Summary Plan Description (SPD) must explain the COBRA rights and other significant plan information. The written SPD must include details about the plan's available benefits, participants' and beneficiaries' rights and how the plan works. Each participant must receive an SPD within 90 days of becoming a participant or within 120 days of the plan's becoming subject to ERISA disclosure and reporting requirements. In addition, any time the plan has material changes during a plan year, participants must receive a Summary of Material Modifications (SMM) within 210 days after that year ends. If the change materially reduces covered benefits or services, participants must receive the SMM within 60 days of the adoption of the reduction. Employers must provide copies of SPDs, SMMs or other plan documents to covered participants or beneficiaries within 30 days of receiving written requests for them.

## **General Notice**

Each employee and each employee's spouse covered by the group health plans

must receive a general notice that explains COBRA rights within 90 days of their coverage. Employers may fulfill the obligation by giving the employee and the spouse the plan's SPD when that document includes the general notice.

The general notice must provide:

- The plan name along with a contact person's name, address and phone number for those who want additional information
- A general explanation of the plan's continuation coverage
- Details of the procedure that qualified beneficiaries must use to provide notification of qualifying events to the plan administrator
- Clarification about participants' responsibilities to notify the plan administrator of their addresses and their beneficiaries' addresses
- A declaration that the general notice does not completely describe COBRA and that participants may obtain more complete information in the SPD and from the plan administrator

Administrators of group health plans of single employers may use a Department of Labor model general notice found on the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa) to comply with the general notice obligation.

## **COBRA Qualifying Notice**

The administrator of a group health plan must offer to provide continuation coverage after receiving appropriate notification of a qualifying event. The employer must notify the administrator within 30 days when the qualifying event is the covered employee's termination, reduced hours, death or Medicare entitlement. The covered employee or qualified beneficiary must notify the administrator within 60 days when the qualifying event is divorce, legal separation or a child losing the status of a dependent.

Group health plans must include instructions describing how covered employees or qualified beneficiaries should give notice of qualifying events. Only one person needs to provide the notice to cover all the affected qualified beneficiaries. If a plan does not include practical instructions pertaining to giving the notices, qualified beneficiaries may give written or oral notice to a representative of the employee benefits department. If the plan covers multiple employers, qualified beneficiaries may give notice to the joint board of trustees. If the plan administrator is an insurance company, or if an insurance company provides the benefits, qualified beneficiaries may give notice to the insurance company.

## **Election Notice**

Within 14 days of receiving notification of qualifying events, the plan administrator must give qualified beneficiaries election notices describing beneficiaries' rights to continuation coverage along with how to make elections. The election notice must include:

- The plan name along with a contact person's name, address and phone number for those who want additional information
- A description of the qualifying event
- The names or statuses of qualified beneficiaries
- An explanation of continuation coverage rights for qualified beneficiaries
- The coverage termination date if beneficiaries do not elect continuation coverage
- An explanation of how beneficiaries can elect to continue coverage
- An explanation of the consequences of not electing continuation coverage or waiving continuation coverage
- A description of the available continuation coverage, length of coverage and how to extend it for second qualifying events or disability if the coverage lasts less than 36 months

- Information about how early termination of continuation coverage may occur
- Due dates, grace periods and requirements for premium payments
- Clarification about participants' responsibilities to notify the plan administrator of their addresses and their beneficiaries' addresses
- A declaration that the election notice does not completely describe COBRA and that participants may obtain more complete information in the SPD and from the plan administrator

Administrators may use a Department of Labor model election notice found on the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa) to comply with the election notice obligation.

### **Notice of Unavailability of Continuation Coverage**

If the administrator of a group health plan denies a continuation coverage request or an extension of continuation coverage request, the denied individual must receive a notice explaining the reason for denial within 14 days of the request.

### **Notice of Early Termination of Continuation Coverage**

Continuation coverage is usually available for 18, 29 or 36 months, but if the coverage will terminate early, qualified beneficiaries must receive notice

describing the termination date, the reason it will terminate and the beneficiaries' rights. Qualified beneficiaries may have the right to elect other group or individual coverage.

### **Early Termination**

Termination of continuation coverage for a group health plan may occur earlier than the final date of the period if:

- Participants do not pay premiums timely
- The employer no longer offers a group health plan
- After electing to obtain continuation coverage, a qualified beneficiary gets coverage from a different group health plan if that plan does not exclude or limit coverage when the beneficiary has a preexisting condition
- A qualified beneficiary who elected continuation coverage reaches eligibility for Medicare
- A qualified beneficiary commits fraud or participates in other conduct that warrants termination of coverage

The qualified beneficiary must receive an early termination notice if the continuation coverage ends early.

## **Extension of an 18-month Period of Continuation Coverage**

Participants in continuation coverage lasting for a maximum of 18 months may extend the maximum time because of:

- The disability of a qualified beneficiary
- The occurrence of another qualifying event

### **Disability**

All qualified beneficiaries in a family may have an extension of continuation coverage for 11 months if one of them is disabled. The plan administrator can require that the beneficiaries pay as much as 150 percent of the coverage cost during the additional 11-month extension.

The Social Security Administration (SSA) must confirm the disability of the qualified beneficiary within the first 60 days of the continuation coverage.

### **Continuation Coverage Premiums**

Administrators of group health plans may require that qualified beneficiaries pay the cost of continuation coverage. However, the plans may offer the coverage for no cost or for a reduced cost. The plans may not charge beneficiaries more than 102 percent of the cost of coverage for those without qualifying events but otherwise similarly situated. The additional two percent covers administrative costs.

Administrators of group health plans may obtain further information about COBRA by visiting the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

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