
COBRA: A primer

A guide to the federal legislation that requires employers to offer continuing health insurance to employees and dependents



This special publication about the benefits law called COBRA (the Consolidated Omnibus Budget Reconciliation Act) was prepared for the group customers of Independence Blue Cross. This publication is for general informational purposes only and is not to be taken as legal or tax advice. Please consult with your benefits specialist or attorney for legal or tax advice regarding COBRA.

COBRA Coverage Law

COBRA seemed fairly modest, but adverse selection and administrative chores have created a burden for many employers.

When President Reagan signed the 1985 COBRA act into law, the legislation's goal seemed modest enough — to allow those who had lost health care coverage for certain reasons (such as loss of a job) to temporarily continue to be protected by health insurance until they were back on their feet again. The idea had two basic parts: (1) the former employee purchases the coverage at the price it cost the employer (plus a two percent surcharge), and (2) the employer provides coverage through its group health plan and charges the recipient for it.

At the time, few realized what would be involved in complying. COBRA was contained in a much larger bill (called the Consolidated Omnibus Budget Reconciliation Act, thus the name), and

there was never a congressional hearing on it. There have been several amendments to COBRA since its inception and numerous court decisions, all of which have added to the complexity of the statute. (Compliance with COBRA is regulated by the Department of the Treasury and the Department of Labor. Each agency has issued final regulations that govern employers' and employees' rights and obligations under COBRA. Similar rules apply to governmental plans under the Public Health Service Act regulated by the Department of Health and Human Services; however, this primer does not address governmental plans.)

Given the high cost of health insurance, few employees and/or family members who are eligible — one survey says 26.6 percent — actually sign up for COBRA.¹

COBRA also has become a classic case of adverse risk selection. In most cases, only those who truly expect to benefit from COBRA are willing to pay for it. Annual claims costs for COBRA members exceed active employee costs by more than 40 percent with an active employee averaging \$6,831 annually and a COBRA member averaging \$9,914.¹

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Since its inception, COBRA has sparked much confusion among employers because of its complicated nature.

The following are answers to the questions employers ask most frequently.



What companies are subject to the COBRA continuation coverage requirements?

Companies that are (a) part of a group of trades, or (b) businesses under common control, with 20 or more full- and/or part-time employees (during at least 50 percent of the working day during the previous year) which offer a group health plan to at least some of those employees, are covered by COBRA. The calculation for determining the number of employees

may be made on a daily basis or on a pay period basis. Part-time employees can be counted as fractions of full-time employees, based on how many hours they work in relation to full-time employees. In general, a control group with fewer than 20 employees — including those who purchase group health insurance through trade associations or other similar arrangements — are not subject to COBRA requirements. (A control group includes parent/subsidiary or brother/

sister companies.) However, in the case of a multi-employer plan, if any employer participating in the plan has at least 20 employees, the entire plan is subject to COBRA. Qualified church plans are not required to offer COBRA to their employees. As noted previously, governmental plans may have to offer COBRA coverage pursuant to the Public Health Service Act.



Who is eligible for COBRA? And for how long?

“Qualified beneficiaries” include the spouses, dependent children of covered employees, and (in the case of a reduction in hours or termination of employment) the covered employees, themselves. To qualify, an individual must have been covered under a group health plan maintained by the employer on the day before a so-called qualifying event — even if that person was covered for only one day. In addition, a child born to, adopted by, or placed for adoption with the covered employee during the COBRA continuation period is also a qualified beneficiary and may be added to COBRA continuation coverage. Qualified beneficiaries are entitled to 18 months of continued COBRA coverage if any of the following events result in a loss of health coverage:

- a reduction in hours
- retirement
- voluntary resignation
- a strike or walkout
- a layoff
- other employment termination for any reason other than gross misconduct

The 18-month period can be measured from the date of the event described above, even if health coverage does not end until a later date. Under certain circumstances, however, the period can be measured from the actual loss of coverage. Moreover, in the case of a child born to, adopted by, or

placed for adoption with the covered employee during the COBRA period, the 18-month period is measured from the date of the initial qualifying event.

Qualified beneficiaries who are spouses and/or dependent children are entitled to 36 months of COBRA continuation coverage if they would otherwise lose their health care benefits as a result of:

- death of the covered employee
- divorce or legal separation
- a dependent child’s ceasing to be a dependent under the plan’s terms
- an employee’s becoming entitled to Medicare benefits

If any qualified beneficiary is determined by the Social Security Administration to have become disabled at any time during the first 60 days of COBRA continuation coverage, such a qualified beneficiary and all qualified beneficiaries who lose coverage due to the same qualifying event, can extend their COBRA continuation coverage for an additional 11 months, up to 29 months (after which the disabled beneficiary becomes eligible for Medicare, if not already so eligible). To be eligible for this extended coverage, the disabled qualified beneficiary must receive a Social Security disability determination prior to the end of the initial 18-month COBRA continuation period and must notify the Plan administrator within 60 days of the receipt of the determination. The disabled beneficiary (and in some cases the disabled beneficiary’s family members) may be charged up to 150 percent of premium costs for

the extra 11 months. If a qualified beneficiary other than the employee has a second qualifying event during an 18- or 29-month period of coverage, the COBRA continuation period may be extended to a total of 36 months, measured from the date of the initial qualifying event.

Those who become spouses or dependents of qualified beneficiaries after the qualifying event may be added as dependents to a qualified beneficiary’s COBRA coverage in the same manner that similarly situated active employees are eligible to add dependents under the terms of the plan. However, spouses and dependents so added are not “qualified beneficiaries” and their rights to COBRA continuation coverage arise only to the extent that the qualified beneficiary chooses to cover them. Thus, they may not make independent elections under COBRA. However, as noted above, children, born to, adopted by, or placed for adoption with the covered employee during a period of COBRA coverage, will become COBRA qualified beneficiaries eligible to make independent COBRA elections. These children will also be able to extend the COBRA continuation period to 36 months if a second qualifying event occurs during the initial COBRA continuation period (see the next page).

Frequently Asked Questions

Continued



What if a second qualifying event occurs during the initial 18-month COBRA continuation period?

If one of the above “36-month qualifying events” (e.g., death of the covered employee, divorce, separation, etc.) occurs during an 18- or 29-month COBRA continuation period, qualified beneficiaries other than the covered

employee will be entitled to purchase COBRA coverage for up to 36 months from the date of the original qualifying event (e.g., termination of employment or reduction in hours).

If a current employee becomes entitled to Medicare and thereafter loses coverage due to a termination of employment or reduction in hours, the

covered employee's dependents may purchase up to 36 months of COBRA continuation coverage measured from the date of Medicare entitlement. The employee would be entitled to only 18 months of COBRA continuation coverage.



Can a COBRA-qualified beneficiary change coverages?

Usually, a qualified beneficiary must be offered the opportunity to continue the coverage that he or she had prior to the qualifying event. But there are exceptions:

- Qualified beneficiaries must be allowed the same opportunity to add a new spouse and dependents as similarly situated active employees, even outside an open enrollment period. This addition may result in an increase in COBRA premiums,

depending on how coverage under the Plan is priced.

- If a qualified beneficiary was covered under a region-specific plan and relocates outside the service area, the Plan must allow that qualified beneficiary to switch to an alternative plan that extends to the qualified beneficiary's new area, if the employer offers such a plan.
- If an employer offers more than one group health plan or option and holds open enrollment periods for active employees, those same

options must be available to qualified beneficiaries, whether or not the qualified beneficiary is covered under a particular plan or option prior to open enrollment or prior to the qualifying event.

- If the plan for active employees changes, the benefits provided to COBRA-qualified beneficiaries must be no less than those offered to active employees.



What if a COBRA-qualified beneficiary becomes covered by another plan?

If, after electing COBRA continuation coverage, a qualified beneficiary becomes covered by another plan or entitled to Medicare benefits, an employer's COBRA responsibilities with respect to that person end, provided that the new plan does not contain an exclusion or limitation with respect to a preexisting condition of that individual. The exception for pre-existing conditions and exclusions does not apply if the exclusion or limitation does not apply to (or is satisfied by) the individual by reason of the individual's prior creditable coverage. If the qualified beneficiary becomes covered under another plan or becomes entitled to Medicare before the COBRA election date, the Plan may not terminate COBRA coverage.





What about premium payments?

COBRA beneficiaries may only be charged 102 percent of the applicable premium, or the cost of coverage provided to similarly situated active employees, regardless of whether those costs are paid by the employer or employee. The premium may be increased to 150 percent for the special 11-month extension in the case of a disabled qualified beneficiary. The final COBRA regulations allow a plan to charge the 150 percent rate to nondisabled family members only if the disabled individual is part of the coverage group. Furthermore, the plan may charge 150 percent through the thirty-sixth month if a second qualifying event occurs during the 11-month extension. Since the IRS has never proposed regulations for calculating

those premium costs, employers are free to follow a reasonable, “good-faith” interpretation in determining costs. For example, if an employer is self-insured but buys stop-loss insurance to limit liability, the employer may be able to factor those stop-loss costs into applicable calculations.

The IRS has, however, issued guidance on the manner in which qualified beneficiaries are charged. According to the IRS, if a plan charges active employees a single rate and a family unit (employee and one or more dependents) a family rate, the plan can charge two or more beneficiaries from the same family (e.g., employee and spouse, employee and child, or multiple children) the family rate for COBRA continuation coverage since they are similarly situated to the category

of two or more individuals from the same family. However, where only a single family member elects COBRA continuation coverage, the plan cannot charge the family rate since a single family member is similarly situated to an individual employee. Where a plan utilizes a more elaborate pricing scheme (e.g., employee only, employee plus one, employee plus two, etc.), coverage for qualified beneficiaries must be priced in accordance with the non-COBRA individual or family unit most similarly situated to the qualified beneficiary or group of qualified beneficiaries.



Must multiple members of a family be treated separately?

Family members of an active employee are generally covered under the plan elected by the employee. In contrast, each family member who is a qualified beneficiary may make independent COBRA elections. Thus, during an open enrollment period, a qualified beneficiary who is a spouse or dependent child may choose to be covered under different options from those chosen by the covered employee. If qualified beneficiaries in the same family make different elections, they may be charged premiums accordingly (e.g., a qualified beneficiary electing coverage different from other qualified beneficiaries can be charged the individual rate while that qualified beneficiary’s remaining family members electing coverage could be charged the family rate).



Can a qualified beneficiary choose when COBRA continuation coverage begins?

Ordinarily, no. In general, the 18-, 29- or 36-month continuation coverage period will begin on the date of the qualifying event. If the election is timely, COBRA continuation coverage

will be retroactively effective as of the date coverage is lost. If, however, a qualified beneficiary waives COBRA continuation coverage, he or she must be allowed to revoke that waiver and elect COBRA continuation coverage during the 60-day election period. If a qualified beneficiary revokes the waiver of COBRA continuation coverage, the

election may be treated as applying on a prospective basis — in other words, to claims incurred on or after the date of the election. Alternatively, employers are permitted to apply the election of COBRA retroactively to the date of the qualifying event.

Frequently Asked Questions

Continued



When does COBRA continuation coverage end?

COBRA continuation coverage must be made available to qualified beneficiaries for the full 18-, 29-, or 36-month period, unless:

- The person fails to pay premiums on time (a 30-day grace period must be provided; 45 days in the case of the initial premium). Payments are considered made on the date sent. Plans must accept payment from third parties, such as hospitals and new employers.
- The employer ceases to maintain any group health plans, including successor plans. The term “employer” includes all business entities that are part of a group of trades or businesses under common control.
- The person becomes, after the election of COBRA coverage, covered under another health plan maintained by another entity that does not have any exclusions or limitations regarding preexisting conditions that the person has, other than an exclusion or limitation that does not apply to (or is satisfied by) the person by reason of the person’s prior creditable coverage.
- The person becomes, after the election of COBRA continuation coverage, entitled to Medicare benefits. That does not mean merely eligible, but actually signed up for and covered by Medicare Part A, Part B, or both.



Are employers required to provide continuing health care coverage for military reservists?

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employers are required to provide limited continuing coverage for reservists and National Guard personnel that have been called to active duty. This law applies to all employers regardless of size and includes federal, state, and local governments.

Generally, USERRA requires employers to provide health care coverage for those employees on active duty for less than 31 days as if the service member had not taken leave. This would include coverage for dependents if the reservist’s employer health plan included dependent coverage. If the reservist is on duty for more than 30 days, the reservist and their dependents are eligible for coverage under Tricare, the federal benefits program that provides coverage for

our armed forces, for a maximum of 24 months.

Reservists can elect to continue coverage with their employer during the time they are eligible for Tricare, however the employer may charge the reservist up to 102% of the premium.

Effective March 10, 2005, employers are required to provide employees with notice of their benefits and obligations under USERRA.


Here’s a checklist of things that employers/Plan administrators should do:

- ✓ Provide a General Notice of COBRA rights and responsibilities to employees (and their covered spouses) within 90 days from the date coverage under the plan begins. This General Notice may be included in the plan’s summary plan description (SPD) (but see considerations under “Notice Requirements” on the next page);
- ✓ Provide employees with notice of their benefits and obligations under USERRA;
- ✓ If the employer is not also the Plan or COBRA administrator, notify the Plan or COBRA administrator of an employee’s qualifying event (generally within 30 days of the qualifying event of the date of loss of coverage);
- ✓ Adopt reasonable procedures – and describe them in the Plan’s SPD – for employees/qualified beneficiaries to notify the Plan administrator of certain qualifying events (like divorce or a child’s loss of dependent status);
- ✓ Notices of Unavailability of Continuation Coverage (advising them of the determination that they are not entitled to COBRA continuation coverage); and/or,
- ✓ Notices of Termination of Continuation Coverage (if the continuation period ends prior to the end of the applicable maximum period).


Plan administrators must provide qualified beneficiaries with:

- ✓ Election Notices (notice of their right to elect COBRA continuation coverage once notice of a qualifying event has been received);

Notice Requirements


 **General Notice.** Within 90 days from the date an employee and/or an employee's spouse become eligible for coverage under the plan, they must be provided with notice of their COBRA rights and obligations. A single notice to the employee and spouse is acceptable if they share a residence and spousal coverage under the plan begins less than 90 days after the employee's coverage. While the General Notice can be incorporated into the plan's SPD, it must be delivered to the employee and his/her spouse within the required 90 day time frame.


The notice must be in plain language, and must include plan-specific information — including the name/address/phone number of the party who will provide information about the plan and COBRA upon request.

 **Qualified Beneficiaries' Notice Obligations.** The employee or qualified beneficiary must notify the Plan administrator of the following qualifying events: divorce/legal separation, the cessation of a child's dependent status, or a Social Security Administration determination of disability (or that disability has ended). The individual must be given a minimum of 60 days from the date of the event (or from the date they were notified of their obligation to provide the notice) to provide the required notice to the Plan administrator.


The Plan must establish reasonable procedures for employees/qualified beneficiaries to furnish notice to the Plan administrator. Procedures will be deemed reasonable only if they are described in the Plan's SPD. Procedures should specify who is designated to receive notices, the means that must be used for giving notice, and the required notice content


(the Plan may require the submission of a specific notice form so long as it is free and easily available).

 **Employer's Notice Obligation.** The employer must notify the Plan administrator within 30 days of the date of a qualifying event, that is the death of the covered employee, the employee's termination of employment or reduction in hours, the employee becomes entitled to Medicare benefits, or the employer files for bankruptcy (only if the employer provides coverage to retirees). Normally, this 30-day period is measured from the date of the qualifying event. However, the plan may provide that the period be measured from the date of loss of coverage under the plan.


 **Plan administrator's Notice Obligation.** Upon receipt of notice of a qualifying event, the Plan administrator has 14 days from the date of the employer's or qualified beneficiary's notification of the qualifying event to send qualified employees and/or other qualified beneficiaries an Election Notice regarding their COBRA rights. (If the employer is the Plan administrator, the Plan administrator has 44 days from the date notified by the employer of a qualifying event to send the Election Notice to qualified beneficiaries. The 14-day rule continues to apply in the case of notice received by the Plan administrator from a qualified beneficiary.) The Election Notice must be in plain language and must include specific information — including the date coverage will end and an explanation of the procedures for electing and maintaining, or waiving, continuation coverage. The Election Notice must inform qualified beneficiaries who want coverage that they have 45 days from the date of


their election to pay the premium for continuation coverage, and that a 30-day grace period applies to later premiums. If a covered employee and his or her spouse each lose coverage, they BOTH must receive an Election Notice. If they live together, one notice addressed to both and mailed to their last known address is sufficient. In cases of separation or divorce, separate notices and election forms must be sent to the spouse (if a different address is known to the employer or Plan administrator). Notification to the employee or spouse is considered suitable notice to all other qualified beneficiaries living in the employee's or spouse's home.


 **Notice of Unavailability of Continuation Coverage.** If the Plan administrator determines that an individual is not entitled to COBRA continuation coverage (or an extension of coverage) after there is an attempt to notify the Plan administrator of a qualifying event, a notice (in plain language) explaining the reason for the denial must be sent to the individual within 14 days after the Plan administrator's receipt of notice of the qualifying event.


 **Notice of Termination of Continuation Coverage.** The Plan administrator must issue this notice if COBRA continuation coverage will terminate prior to the end of the qualified beneficiary's maximum coverage period. The notice must be in plain language, explain the reason for early termination, and include the effective date of termination. The notice must be sent as soon as practicable after the determination of early termination has been made, but termination of coverage is not contingent upon the issuance of the notice.

Recommended Procedures

 Employers and Plan administrators should implement a detailed COBRA notification and tracking system and keep records of all notices sent, premiums received, etc. Once a qualified beneficiary has made an election, his or her choices should be recorded, enacted, and confirmed. The more complete the employer's or Plan administrator's records, the more likely the employer or Plan administrator is to convince a court that it has complied with the COBRA

 requirements, if ever challenged by a qualified beneficiary.

 The required COBRA notices should include all of the information necessary for qualified beneficiaries to make informed elections and to protect their rights under COBRA. Additionally, the Plan administrator must inform qualified beneficiaries of their rights to convert to individual coverage, when applicable, during the last 180 days of their COBRA coverage.

 The Plan administrator should keep track of the status of qualified beneficiaries, including information about divorce, coverage under another plan, or change in dependency. The Plan administrator must inform qualified beneficiaries of any available options or changes in their coverage, whether because the company has terminated or modified the plan covering them, terminated all health coverage, or because the qualified beneficiary has chosen to terminate coverage.

For more information

Inquiries about COBRA can be directed to:

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

or

A COBRA specialist at the Employee Benefits Security Administration 1-866-444-3272.



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