

# **UNDERSTANDING COBRA**

## **OVERVIEW**

In 1986 congress enacted the Consolidated Omnibus Budget Reconciliation Act (COBRA) which requires employers with 20 or more employees to provide continuation of group health coverage that otherwise might be terminated.

Those who elect COBRA coverage pay the full premium plus an optional 2% administration fee. The employer is not required to contribute to the premium.

COBRA law requires employers to offer continuation of coverage for medical, dental, vision, and the medical flexible spending accounts in a section 125 (cafeteria plan) plan, but not for life, disability and other employee benefits.

## **WHO MUST OFFER COBRA?**

COBRA requires employers who employ 20 or more employees for at least six months of the previous year to offer continuation of group medical benefits. The term “employee” includes full-time employees. Part time employees are counted to the extent that their hours collectively add up to one or more full time employees.

## **WHEN DOES COVERAGE END?**

- The last day of the maximum COBRA period (see chart next page).
- When premiums are not paid on a timely basis (45 day grace period for 1<sup>st</sup> payment, 30 day grace period for subsequent payments).
- When COBRA participant obtains coverage under another group health plan (unless that plan would impose a pre-existing condition waiting period on the participant).
- When the employer ceases to maintain any group health plan.
- When Medicare entitlement is reached (if after the election of COBRA).
- If COBRA extension is due to disability, COBRA coverage ends when the social security administration deems that an individual no longer merits definition as disabled (coverage does not end until at least 30 days after such determination).

## WHO IS ELIGIBLE FOR COBRA?

Qualifying Event	Beneficiary	Maximum COBRA Period
Termination of employment	any combination of employee/spouse/ children	18 months
Reduction in work hours below eligibility for group coverage	any combination of employee/spouse/ children	18 months
Employee reaches 65 and becomes eligible for Medicare	any combination of spouse and/or children	36 months
Divorce or legal separation	any combination of spouse and/or children	36 months
Employee death	any combination of spouse and/or children	36 months
Dependent child reaches maximum age under health plan policy	dependent child	36 months
Chapter 11 bankruptcy	any combination of employee/spouse/ children	36 months
Employee becomes disabled under social security definitions	any combination of employee/spouse/ children	29 months (18 months at 102% of premium, 11 months at 150%. Disability must be present within 60 days of the qualifying event)

## EMPLOYER/EMPLOYEE REQUIREMENTS

Employers who must offer COBRA continuation to their employees must provide notice of COBRA rights to all employees. In addition:

- The employer must provide the employee with a general notice when they are first hired that advises the employee of their COBRA rights.
- The employer must notify the COBRA administrator of any employee who qualifies for COBRA continuation within 30 days of any qualifying event.
- The COBRA administrator has 14 days to notify the employee of their COBRA rights. (If employer is administrator then a combined total of 44 days is allowed).
- The employee has 60 days from the date of notice or last day of coverage (whichever is later), to elect or decline COBRA continuation.
- The employee must pay the required premium within 45 days of their COBRA election retroactive to the date coverage was terminated. If subsequent payments are 30 or more days past due, coverage is cancelled with no opportunity for reinstatement.
- COBRA Premium "underpayments" must be accepted as long as the payment is "no greater than the lesser of \$50 or 10% of the required premium".
- An employee must notify their employer within 60 days of a change of address, a dependent who ceases to be eligible as a dependent, or of a divorce or legal separation.
- Disabled employees must notify the plan administrator within 60 days of a determination of disability by the Social Security Administration.

## POTENTIAL PENALTIES FOR INCORRECT ADMINISTRATION

- ERISA fines up to \$110 per day per beneficiary per violation.
- Department of Labor Lawsuits for ERISA violations.
- IRS Excise Tax fines (\$100 to \$200 per day).
- Lawsuits for employee medical costs incurred during COBRA eligibility.

## OTHER IMPORTANT INFORMATION

- Once COBRA coverage is elected, dependents may not be added except in cases of birth or adoption, or at the group's next open enrollment period. In the case of birth or adoption, the individual has 30 days to enroll the dependent.
- Qualified beneficiaries must be offered coverage identical to that received immediately before the COBRA qualifying event. If employees are required to enroll similarly in medical and dental, COBRA coverage has the same requirement. If dissimilar enrollment is allowed, COBRA coverage may also be elected for medical coverage or dental coverage separately.
- All COBRA participants who move outside of the geographical area and ask for alternative coverage must be offered this coverage, if available, no later than the first of the month following the request.
- Beneficiaries may change coverage elections during open enrollment periods. As a general rule, COBRA beneficiaries should be treated like active employees.
- If the group health plan offers conversion to an individual policy, it must be offered to the COBRA participant within 180 days of the end of their COBRA continuation.
- The covered employee or the spouse of the covered employee may elect COBRA continuation for all family members. The covered employee, spouse, and dependent children each have an independent right to elect COBRA coverage. A spouse and/or dependent child may elect COBRA continuation even if the employee does not elect coverage.
- Communication materials regarding COBRA should be addressed to the employee and to the spouse by name.
- The Health Flexible Spending Account portion of a Section 125 Cafeteria Plan may be extended under COBRA if a positive balance in the employee's account exists at the time of the qualifying event, and the employer offers a medical plan. The plan is extended under COBRA only through the end of the Section 125 plan year, and the employee must continue to make contributions into the plan (after tax dollars) to keep the coverage.
- New employees who waived coverage in an employer's plan because they had COBRA coverage must be offered special enrollment at the end of the COBRA period. They are not required to wait until open enrollment.
- All COBRA related data must be retained for a minimum of 2 years.

## HIPAA AND COBRA

On August 21, 1996, the Health Insurance Portability and Accountability Act (HIPAA) was signed into law. HIPAA makes changes to the following areas of COBRA.

- Disability Extension (increased eligibility from 18 to 29 months) must be provided if employee is disabled within 60 days of the COBRA qualifying event. Prior to HIPAA, disability must have been present on or before the qualifying event.
- Definition of “dependent children” is modified from “children covered before the qualifying event” to now include “child born to the covered employee or placed for adoption with the employee while the employee is on COBRA continuation”.
- The 11 month extension (29 total months) of continued coverage for a disabled beneficiary is also available to the spouse and dependent children.
- On June 9, 1998, the U.S. Supreme Court ruled that a health plan may not deny COBRA coverage to otherwise eligible COBRA beneficiaries because they are covered by another group health plan, or Medicare, at the time they elect COBRA coverage. COBRA coverage must be offered to those who are covered under other group health coverage or Medicare *prior* to their COBRA election date. As always, COBRA coverage can be terminated when individuals become covered under another group health plan or Medicare *after* their COBRA election date. If the new group health plan excludes or limits coverage for preexisting conditions, COBRA coverage will not end until that plan’s exclusion or limitation no longer applies.
- The IRS requires that when health coverage is ended in anticipation of a COBRA qualifying event (such as legal separation in anticipation of divorce) then COBRA coverage must be offered at the time of the qualifying event regardless of how many months have passed since coverage was terminated.

## INTERESTING COBRA FACTS

- On average, only 7.2% of employees have a qualifying event in any given year.
- Only 18% of the 7.2% elect COBRA coverage (1.3% of all employees).
- The average participant stays on COBRA for 10.3 months.
- Of those with increased COBRA eligibility (36 months), benefits are maintained for an average of 25 months.
- Claims for COBRA participants are, on average, 55% greater than non-COBRA employees.

*This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is not intended to be a complete description of COBRA legislation. It is provided with the understanding that it does not represent legal or accounting advice, nor is it given in exchange for professional fees.*