

# LEGISLATIVE BRIEF

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## Top 10 COBRA Mistakes (and How to Avoid Them)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that employers provide former employees and dependents who lose group health benefits with an opportunity to continue group health insurance coverage for a limited period of time. Compliance with the complex rules regarding COBRA coverage can be difficult and mistakes can be costly. Penalties for non-compliance can include IRS excise taxes and ERISA statutory fines.

This Legislative Brief provides practical information and tips for avoiding these penalties and other risks, such as lawsuits to compel coverage and adverse selection of COBRA coverage.

### #10—ASSUMING COBRA DOESN'T APPLY TO YOU

A threshold issue for COBRA compliance is whether COBRA even applies to you as an employer. The general rule is that COBRA applies to **group health plans maintained by employers that have 20 or more employees**. This includes private-sector employers, as well as state and local government employers. The rule includes a built-in exemption for those employers that have fewer than 20 employees. Employers may be aware that there is an exemption, but may not know exactly how it works. Depending on the circumstances, determining how many employees you have for COBRA purposes can be a complicated calculation.

In general, COBRA will apply to employers that have 20 or more employees on more than 50 percent of the typical business days in the previous calendar year. This means that the calculation will apply for the entire calendar year; it does not change if the number of employees goes up or down. So, it can be dangerous to assume that you don't have to offer COBRA if your staff levels decrease.

Also, take care to count employees of companies that are under common control and both full-time and part-time employees. A part-time employee counts as a fraction: divide the number of hours the employee worked by the number of hours required to be full-time.

### #9—ASSUMING COBRA DOESN'T APPLY TO YOUR PLAN

Once you have determined that COBRA applies to you as an employer, the next step is to figure out whether your health plan is subject to COBRA. As noted above, COBRA applies to group health plans maintained by employers. A group health plan is an arrangement established to provide medical care to employees and their families and can be provided in a number of ways, including through insurance or a self-funded arrangement. A key point to note is whether the plan provides medical care.

**Examples of health plans that may be subject to COBRA include:**

- Medical, dental, vision and prescription drug plans;
- Drug and alcohol treatment programs;
- Employee assistance plans or wellness programs that provide medical care;
- On-site health care;
- Health FSAs and HRAs; and
- Self-funded medical reimbursement plans.

# Top 10 COBRA Mistakes (and How to Avoid Them)

**Examples of health plans that may NOT be subject to COBRA if they do not offer medical care include:**

- Long-term care plans;
- Accidental death & dismemberment plans;
- Group term life insurance plans;
- Long-term and short-term disability plans;
- Wellness programs or employee assistance programs that do not provide medical care;
- Exercise or fitness centers; and
- On-site first-aid facilities.

Another potential pitfall to keep in mind is assuming that cancelling or terminating a health plan means that COBRA obligations terminate as well. If an employer terminates one plan, but continues to provide any group health plan, the obligation to provide COBRA coverage continues.

Determining COBRA obligations in this type of situation can be especially complex when there is a merger or acquisition involved.

## **#8—NOT KNOWING WHO GETS COBRA AND WHEN**

Employers and plan administrators should know who is entitled to COBRA coverage. Problems can arise if COBRA is not offered to someone who is eligible or if it is offered to a person who is not eligible to elect COBRA coverage.

Under the COBRA rules, a “**qualifying event**” triggers COBRA coverage for “**qualified beneficiaries**” (QBs).

A **QB** is an individual covered by a group health plan on the day before the qualifying event. A QB can be:

- The employee;
- The employee’s spouse; and/or
- The employee’s dependent child(ren).

In some cases, a retired employee (and his/her spouse and/or dependent children) can be a QB. In addition, a child born to or placed for adoption with the covered employee during the COBRA coverage period will become a QB.

Depending on the plan’s eligibility rules, agents, independent contractors and directors could also be QBs.

A **qualifying event** is a specified triggering event that:

- Is listed in the COBRA statute;
- Causes a loss of coverage under the plan; and
- Occurs within the “maximum coverage period” (this is discussed below) while the plan is subject to COBRA.

The triggering events that will give rise to COBRA coverage depend on who is affected.

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The following chart shows which events are qualifying events for each type of individual:

QUALIFYING EVENT	TRIGGERS COBRA COVERAGE FOR:
Termination of covered employee's employment (for reasons other than gross misconduct)	<ul style="list-style-type: none"> <li>• Covered employee</li> <li>• Spouse</li> <li>• Dependent children</li> </ul>
Reduction in hours of covered employee's employment	<ul style="list-style-type: none"> <li>• Covered employee</li> <li>• Spouse</li> <li>• Dependent children</li> </ul>
Covered employee becoming entitled to Medicare	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Dependent children</li> </ul>
Divorce or legal separation of covered employee	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Dependent children</li> </ul>
Death of covered employee	<ul style="list-style-type: none"> <li>• Spouse</li> <li>• Dependent children</li> </ul>
Loss of dependent child status under plan rules	<ul style="list-style-type: none"> <li>• Dependent child</li> </ul>

In addition to being familiar with the rules provided by the COBRA statute, it is important to look at the terms of the plan document. To be a qualifying event, the event must cause a loss of plan coverage. Just because a certain event is permitted to be a triggering event under COBRA does not mean it will cause a loss of coverage under the plan.

For example, COBRA allows legal separation of the employee and his or her spouse to be a qualifying event, but the plan may only terminate coverage if the employee and spouse are divorced.

## #7—GIVING NO INFORMATION

Once it is determined that a plan has to provide COBRA coverage, it is important to make sure that plan participants and beneficiaries are given adequate information about COBRA.

The COBRA notice rules, which became effective for many plans on Jan. 1, 2005, provided guidelines and consistency to COBRA's general mandates regarding notice obligations, but did not otherwise change the substantive COBRA rules. However, they are important because failure to comply can lead to penalties under ERISA. Also, if participants and beneficiaries are not notified of their obligations, the plan's rules cannot be enforced.

The following are the required COBRA notices:

**General (or Initial) Notice.** This notice provides general information to plan participants regarding COBRA and the plan's procedures. It must be provided **within 90 days after plan coverage begins** and must be written to be understood by the average plan participant. It may be provided as part of a Summary Plan Description. The COBRA notice rules specify the required content (see below) and also provide a model notice.

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# Top 10 COBRA Mistakes (and How to Avoid Them)

- **Election Notice.** The election notice is the most important notice for participants and beneficiaries who will be electing COBRA. It provides information about a qualified beneficiary's rights and obligations regarding a specific qualifying event and available COBRA coverage. It must be provided to qualified beneficiaries **within 14 days after the plan administrator is notified of the qualifying event**. However, if the employer is the plan administrator, the notice must be provided **within 44 days of the qualifying event or the loss of coverage** (whichever is later). The COBRA notice regulations include a model election notice as well.
- **Notice of Unavailability.** This is a new notice mandated by the COBRA notice rules. If an individual gives notice of a qualifying event, but for some reason is not entitled to COBRA coverage, the plan administrator must give the individual **an explanation of why coverage is not available**. The deadline for this notice is the same as for the election notice.
- **Notice of Early Termination.** Normally, COBRA coverage will terminate at the end of the maximum coverage period. If coverage terminates early, qualified beneficiaries must be notified. This notice must be provided **"as soon as practicable"** after it is known that coverage will terminate (or has terminated). It must contain the reason for the early termination, the date coverage terminated or will terminate and a description of any available conversion rights.
- **Employer's Notice of Qualifying Event.** For certain qualifying events, the employer has the responsibility to notify the plan administrator of the event's occurrence. However, if the employer is the plan administrator, this notice is not required. If the event is the employee's death, termination of employment, reduction in hours of employment or Medicare entitlement, the employer must notify the plan administrator **within 14 days of the qualifying event or the loss of coverage**, whichever is later. The notice must include sufficient information to determine the plan, the employee, the qualifying event and the date it occurred.

## #6—GIVING BAD INFORMATION

Unfortunately, making sure that you are providing notices in certain situations is not always enough. It is important to make sure that the notices you provide contain all the required information and that the information is accurate.

The following charts summarize the content requirements for the two major COBRA notices—the **general notice** and the **election notice**.

### The general notice must contain the following information to be compliant:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• The plan name;</li><li>• The name, address and phone number of a contact person who can provide information about the plan and COBRA;</li><li>• A description of COBRA coverage under the plan (including who can be a qualified beneficiary, the types of qualifying events under the plan, a description of the maximum coverage period and ways to extend it, and the plan's requirements for payment);</li></ul> | <ul style="list-style-type: none"><li>• The plan's procedures for qualified beneficiaries to provide notice of certain qualifying events or Social Security Administration (SSA) disability determinations;</li><li>• A statement that the notice does not fully describe COBRA coverage or other rights under the plan and that more information is available from the plan administrator or the SPD; and</li><li>• A statement regarding the importance of advising the plan administrator of any change of address.</li></ul> |
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# Top 10 COBRA Mistakes (and How to Avoid Them)

The election notice is the most detailed notice, since it relates to a specific qualifying event for specific QBs. It must contain the following elements:

- The plan name;
- The name, address and phone number of a contact person who can provide information about the plan and COBRA;
- Identification of the specific qualifying event;
- The date plan coverage will terminate;
- Identification of the QBs by status or name;
- A statement that each QB has an independent right to elect COBRA coverage;
- A description of the COBRA coverage under the plan;
- The amount that each QB is required to pay for coverage and the procedures for making payments;
- An explanation of how to elect coverage and the date by which the election must be made;
- The consequences of failing to elect or of waiving COBRA coverage;
- The duration of COBRA coverage and how coverage may be extended;
- An explanation of the QB's responsibility to provide notice of a second qualifying event or SSA disability determination (or determination that the QB is no longer disabled), including a description of the procedures for providing notice;
- A statement that the notice does not fully describe COBRA coverage or other rights under the plan and that more information is available from the plan administrator or the SPD; and
- A statement regarding the importance of advising the plan administrator of any change of address.

## #5—NOT FOLLOWING YOUR OWN RULES

There are several COBRA rules that require a plan to have procedures in place, whether by statute or necessity. Not following its procedures can put a plan in the position of being out of compliance with COBRA's requirements or extending coverage for too long or unnecessarily.

### **Notice Procedures**

With respect to the notice rules, plans must have reasonable procedures in place for covered employees and QBs to notify the plan administrator of certain events, such as:

- Qualifying events that are the divorce or legal separation of the covered employee or a dependent child losing dependent status under the plan;
- Second qualifying events (triggering events that occur during the period of COBRA coverage that would have caused a loss of coverage under the plan if the QB were still covered); and
- SSA disability determinations (or cessation of disability).

In order to be reasonable, the procedures must:

- Be described in the SPD;
- Specify the individual or entity that should receive the notice;
- Specify how notice is to be given (for example, in writing or on a specific form);

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- Describe the information required (such as the QBs involved, the date of the event, the nature of the event, the plan name and any additional documentation the plan administrator might want, such as a copy of a divorce decree);
- Specify the timeline for giving notice; and
- Provide for the proper handling of incomplete notices.

In general, individuals must provide a notice of a qualifying event or disability determination within 60 days. Disability determination notices must also be given before the end of the original 18-month COBRA coverage period. In addition, QBs must notify the plan administrator within 30 days of a determination that they are no longer disabled.

If the plan does not have reasonable procedures for these notices, a QB may be deemed to have given notice if he or she has communicated a specific event in a manner reasonably calculated to inform those customarily considered responsible for the plan.

## ***Election Procedures***

A plan should also have procedures in place for complying with rules for election of COBRA coverage. For example, a QB must be given at least 60 days to elect COBRA. The election period begins on the date the election notice is provided or the date on which coverage would be lost (whichever is later). Also, each qualified beneficiary has an independent right to elect COBRA, a covered employee or spouse can elect on behalf of all other QBs, and a parent or guardian can elect on behalf of a minor child. A QB may also revoke a prior waiver of COBRA coverage during the election period. A plan administrator that fails to follow the election procedures is at increased risk for claims by QBs.

## ***Payment Procedures***

As discussed below, a plan may charge a premium for providing COBRA coverage. QBs must make premium payments in a timely manner and a plan administrator has some leeway in designing its procedures. However, the COBRA rules set some guidelines for payments. The initial premium is due 45 days after the COBRA election is made. Then, the premium due date is usually the first day of the month. However, the plan must allow a 30 day payment grace period.

In addition to complying with the COBRA rules, a plan should have procedures in place for dealing with issues that may arise in the day-to-day administration of COBRA coverage. For example, a plan will need a process for ensuring that premium payments are forwarded to insurers in a timely manner. Also, it should prepare for a situation where a QB makes late payments or short payments.

## **#4—NOT GIVING ENOUGH COVERAGE**

The continuation coverage provided to QBs under COBRA must be the same as coverage provided to “similarly situated” individuals who are covered under the plan (not through COBRA). This is intended to be the same coverage the QB had before the qualifying event. Thus, COBRA coverage cannot be scaled back just for QBs and not for other plan participants. QBs are also entitled to the same benefits, rights and privileges that similarly-situated participants and beneficiaries receive under the plan, such as special enrollment rights and the ability to make changes at open enrollment. If the plan’s terms are amended, those amendments apply equally to active participants and QBs.

## **#3—CHARGING TOO MUCH (OR NOT ENOUGH)**

A health plan may charge COBRA QBs for the cost of providing COBRA coverage. It may require QBs to pay up to 102% of the “applicable premium” for the plan. In the case of a disability extension, it may charge up to 150% of the applicable premium for certain QBs. The applicable premium is the cost to the plan of providing coverage. For insured plans, the applicable premium is usually equal to the insurance premium paid to the insurance carrier. However, the calculation can be more difficult for self-funded plans and can be determined using past costs or an actuarial estimate of future costs. The applicable premium is the total cost to the plan for providing coverage, so it includes both employer- and employee-paid portions and can also include the administrative cost of providing COBRA coverage.

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The plan must calculate the COBRA applicable premium in advance for a 12-month “determination period.” The plan can choose any 12-month period to be the determination period, but it must remain consistent every year. The COBRA premium may be changed for a new determination period if the applicable premium changes and there are certain limited situations where the COBRA premium may be changed during the determination period (for example, if the QB changes coverage to another benefit package with a higher applicable premium).

The plan administrator should use caution in calculating the COBRA premium as well as in communicating that premium to QBs. Fixing mistakes that result in over- or undercharging QBs for COBRA premiums can be administratively burdensome and raise COBRA compliance issues.

## #2—NO DOCUMENTATION

No matter how good your COBRA compliance track record is, you can still run into trouble if you can't prove it. Adequate documentation is important because it brings together all other elements of COBRA administration and compliance. Having thorough and accurate records will help streamline administration and support the plan in the event of a claim.

There are many different areas where documentation can help avoid COBRA compliance issues. For example, a plan's COBRA notice information and procedures can be documented in the Summary Plan Description and notice documents themselves, as well as the plan document if necessary. A plan administrator should also keep records of notices sent to and received from participants and QBs. Keeping track of payments received from QBs and made to insurers, as well as the deadlines for payments, will also assist in the proper administration of COBRA coverage.

## #1—BAD TIMING

In the context of COBRA, paying attention to the timing of providing coverage can be crucial for reducing exposure to COBRA costs and being compliant with the rules. The duration of COBRA coverage is controlled by the COBRA statute. Complying with these rules by providing the length of coverage required is important. At the same time, many plan sponsors want to minimize the likelihood of being responsible for large claims by COBRA QBs by only providing the minimum duration of coverage.

The period of COBRA coverage offered to QBs is known as the “maximum coverage period.” The length of the maximum coverage period depends on the type of qualifying event that has occurred. The maximum coverage period is 18 months for a termination of employment or reduction in hours and 36 months for all other qualifying events. There are situations where the maximum coverage period can be extended or terminated early.

### *Expanding COBRA Coverage*

There are several ways that the standard maximum coverage period can be extended.

<b>Extended Notice Rule</b>	Allows the maximum coverage period to run from the date of the loss of coverage, instead of the date of the triggering event, if the employer also sends notice to the plan administrator within 30 days of the loss of coverage (instead of the triggering event).
<b>Disability Extending Rule</b>	Extends 18-month period to 29 months for all related QBs.
<b>Multiple Qualifying Event Rule</b>	Extends 18-month coverage period to 36 months for spouse and children when a 2nd qualifying event (such as divorce from or death of the covered employee or loss of dependent status) occurs during the initial 18-month coverage period.
<b>Medicare Entitlement Rule</b>	Extends 18-month period for spouses and children when the covered employee becomes entitled to Medicare within 18 months before the qualifying event.

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# Top 10 COBRA Mistakes (and How to Avoid Them)

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## *Terminating COBRA Coverage*

COBRA coverage usually terminates at the end of the maximum coverage period. It is important to keep track of each QB's period of coverage to be able to tell when coverage should be terminated. In addition, coverage can be terminated early for the following reasons:

- The QB fails to make timely premium payments;
- The employer ceases to make any group health plan available to any employee;
- The QB becomes covered under another group health plan;
- A disabled QB is determined not to be disabled; or
- For cause.

If coverage is to be terminated before the end of the maximum coverage period, notice to the QB is required.

## **MORE INFORMATION**

Keep in mind that the COBRA rules can be very complex and this is not intended to be an exhaustive discussion of the legal requirements. Please contact Group Benefits Strategies if you have questions regarding these legislative requirements.

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## COBRA Common Questions: Administration

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that covered employers provide former employees and dependents who lose group health benefits with an opportunity to continue group health insurance coverage. Individuals who are eligible for health coverage under COBRA are known as “qualified beneficiaries.”

### How long are qualified beneficiaries entitled to COBRA?

#### *18 Months*

Where a loss of coverage is a result of an Employee’s termination of employment (other than by reason of gross misconduct) or reduction in hours, qualified beneficiaries are entitled to continue coverage for a maximum of **18 months**.

#### *36 Months*

Where a loss of coverage is a result of any of the following, qualified beneficiaries are entitled to continue coverage for a maximum of **36 months**:

- Death of a covered employee;
- Divorce or legal separation of a covered employee from the covered employee’s spouse;
- A covered employee becoming entitled to Medicare benefits; and
- A dependent child ceasing to be a dependent child under the terms of the health plan.

#### *29 Months*

Where a loss of coverage is a result of an employee’s termination of employment (other than by reason of gross misconduct) or reduction in hours and a qualified beneficiary is determined by the Social Security Administration to be disabled before, at, or within 60 days of the date of the qualifying event, all qualified beneficiaries within that family are entitled to COBRA for a maximum period of 29 months. To benefit from this extension, any qualified beneficiary within the family must notify the Plan Administrator as required by the reasonable procedures established by the Plan Administrator.

Where a qualified beneficiary was determined disabled by the Social Security Administration prior to the qualifying event, the qualified beneficiary is considered to meet the statutory requirement of being disabled “within the first 60 days of COBRA coverage.”

#### *Lifetime Benefits*

Where a loss of coverage is a result of an employer’s filing for bankruptcy under Chapter 11, covered employees who retired on or before the date of substantial elimination of group health plan coverage, the spouse, surviving spouse or dependent child of such covered employee covered under the plan on the day before the bankruptcy qualifying event are entitled to continue COBRA coverage for life. Where an employer has filed for Chapter 11 bankruptcy, but no longer sponsors a health plan, qualified beneficiaries are not entitled to continue coverage since no health plan exists.

# COBRA Common Questions: Administration

## **How long are qualified beneficiaries entitled to COBRA when the employee/qualified beneficiary was enrolled in Medicare prior to a termination or reduction in hours?**

If the employee was enrolled in Medicare prior to his or her termination or reduction in hours (that is, retirement), the employee is entitled to 18 months of COBRA continuation coverage.

Where the spouse or dependent is covered under the plan on the day before the employee's termination or reduction in hours, the spouse and dependent are entitled to COBRA continuation coverage for the longer of:

- 18 months from the date of the employee's termination or reduction in hours; or
- 36 months from the date the employee became enrolled in Medicare.

## **How long are qualified beneficiaries entitled to COBRA when the employee/qualified beneficiary was enrolled in Medicare after a termination or reduction in hours?**

If the **employee** enrolls in Medicare after his or her termination or reduction in hours (that is, retirement), the employee loses COBRA continuation coverage.

A **spouse or dependent** covered under the plan at the time of the termination or reduction in hours is entitled to 18 months of coverage from the date of the termination or reduction in hours.

## **Under COBRA, is entitlement to Medicare a second qualifying event?**

In February 2004, the IRS released Revenue Ruling 2004-22, which intended to clarify when entitlement to Medicare is a second qualifying event. Because the IRS ruling differs from case law on this same issue, many benefit experts were surprised by the IRS' conclusion.

The IRS held that Medicare entitlement of a covered employee is not a second qualifying event for a qualified beneficiary, unless the Medicare entitlement would have resulted in a loss of coverage for the qualified beneficiary under a health plan (not including COBRA coverage).

The IRS reasoned that the Medicare Secondary Payer (MSP) provisions of the Social Security Act prohibit an employer from terminating an employee's participation in a health plan solely based upon the individual's eligibility for Medicare. Therefore, since an active employee cannot be terminated from the health plan solely because he or she is age 65 or older, entitlement to Medicare is not a qualifying event when it does not cause a loss of coverage.

## **When may COBRA be terminated?**

COBRA continuation coverage will terminate before the maximum coverage (that is, 18, 29, 36 months) period if:

- COBRA premiums are not made in a timely manner;
- The employer ceases to provide a health plan to any employee;
- After electing COBRA continuation coverage, the qualified beneficiary first becomes covered under any other health plan that does not contain a pre-existing condition limitation or where the plan's pre-existing condition limitation is satisfied as a result of the application of creditable coverage as required by HIPAA; or
- After electing COBRA continuation coverage, the qualified beneficiary first becomes entitled to Medicare (Part A or B).

Provided that a qualified beneficiary has received no less than 18 months of COBRA continuation coverage, COBRA continuation coverage will terminate where COBRA coverage was extended to 29 months due to a disability as determined by the Social Security Administration and the Social Security Administration later determines that the qualified beneficiary is no longer disabled.

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Where an individual is covered under COBRA, but not a qualified beneficiary, the individual loses coverage when the qualified beneficiary is no longer covered under COBRA.

A health plan may also terminate a qualified beneficiary's COBRA continuation coverage on the same basis that the plan terminates, for cause, the coverage of similarly situated non-COBRA qualified beneficiaries. For example, if a health plan terminates the coverage of an active employee for the submission of a fraudulent claim, then a qualified beneficiary's COBRA continuation coverage may be terminated for the same reason.

## **When can COBRA be terminated because a qualified beneficiary becomes entitled to Medicare?**

COBRA may be terminated when a qualified beneficiary first becomes entitled to Medicare (Part A or B) after the date of his or her COBRA election. For purposes of COBRA, Medicare entitlement means that the qualified beneficiary is enrolled in Medicare Part A or B. When an individual applies for Social Security upon retirement, enrollment in Medicare Part A is automatic.

## **When can COBRA be terminated because a Qualified Beneficiary becomes covered under another Health Plan?**

COBRA may be terminated when a qualified beneficiary first becomes covered under another health plan after the date of his or her COBRA election.

If a qualified beneficiary declines to enroll in a new employer's health plan, he or she continues to be eligible to continue COBRA coverage under the former employer's plan.

A Plan Administrator may terminate COBRA even where the other health plan is not as comprehensive as the existing employer's plan. For example, the qualified beneficiary has elected to continue coverage under the medical plan and dental plan. The qualified beneficiary becomes covered under his or her new employer's medical plan, but the new employer does not offer dental coverage. The qualified beneficiary's coverage under the former employer's medical and dental plans may be terminated.

Note: Prior to waiving coverage under a new employer's plan, a qualified beneficiary should be certain to understand his or her ability to enroll at a later date. HIPAA provides special enrollment rights to individuals that exhaust COBRA coverage. Voluntary cancellation of COBRA does not provide an individual with a special enrollment right.

## **What premium may be charged for COBRA coverage?**

COBRA premiums may not exceed 102 percent of the cost to the plan for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is incurred by the employer or employee).

Where COBRA continuation coverage is extended due to disability, COBRA premiums may not exceed 150 percent of the cost to the plan for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is incurred by the employer or employee) for months 19 through 29. Where the disabled Qualified Beneficiary is no longer covered under the plan, the remaining Qualified Beneficiaries within the family are entitled to continue coverage for up to 29 months at an amount not to exceed 102 percent of the cost to the plan.

## **When may COBRA premiums be changed?**

COBRA premiums must be established before a 12-month determination period. A determination period must be applied consistently from year to year. During a determination period, COBRA premiums may only be increased in the following three cases:

- COBRA premiums were set below the maximum amount permitted (that is, 102 percent of the plan's cost);

# COBRA Common Questions: Administration

- COBRA premiums are increased to 150 percent of the plan's cost as permitted during disability extensions; or
- The Qualified Beneficiary has changed his or her election (that is, single to family, HMO plan to PPO plan).

Qualified beneficiaries are entitled to change elections for coverage on the same terms and conditions as similarly situated active employees. Therefore, if active employees are permitted to change their elections annually, qualified beneficiaries must be permitted to do the same. For example, some employers offer their employees a choice between an HMO plan and a PPO Health Plan. Employees currently covered under one of the employer's health plans are permitted to change plans at the beginning of each plan year. In this example, qualified beneficiaries must also be permitted to change elections at open enrollment.

Note: If an insurance carrier increases rates mid plan year, COBRA premiums may not be increased during the determination period, unless COBRA rates were set below the maximum amount permitted (i.e. 102 percent of the plan's cost).

## What is timely payment for COBRA continuation coverage?

The qualified beneficiary's first COBRA premium payment is due within 45 days of the date of his or her COBRA election.

For subsequent COBRA premiums, a qualified beneficiary's payment is considered timely if made on the later of the following:

- Within 30 days of the beginning of the coverage period (that is, the beginning of the month);
- The date on which similarly situated active employees are required to pay for coverage; or
- The date on which the plan is permitted to pay the insurance company, HMO, or other entity that it pays for coverage; or

The time periods listed above are commonly referred to as the grace period.

Payment is considered made on the date it was sent by the qualified beneficiary. COBRA premiums may be paid by any third party on behalf of the qualified beneficiary. For example, a qualified beneficiary's new employer may pay COBRA premiums to the former employer on behalf of the qualified beneficiary.

## What if a qualified beneficiary fails to pay the entire COBRA premium?

If a qualified beneficiary makes timely payment in an amount that is not significantly less than the amount due, the payment is deemed to meet the qualified beneficiary's payment obligation, until the plan notifies the qualified beneficiary and grants a reasonable amount of time to correct the deficiency. For this purpose, 30 days is considered reasonable.

## Under COBRA, what coverage must be offered to a qualified beneficiary?

Each qualified beneficiary must be offered an opportunity to elect the same coverage that was provided on the day before the qualifying event.

### *Example of Benefits Offered Under Separate Plans:*

A qualified beneficiary was covered under the employer's medical plan and dental plan on the day before the qualifying event. Similarly situated active employees are not permitted to elect dental coverage unless they also elect medical coverage. The medical and dental benefits are offered under two separate plans. These fully-insured plans are insured by two separate carriers. In this example, the qualified beneficiary may choose to elect:

- Medical coverage;

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This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

# COBRA Common Questions: Administration

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- Dental coverage;
- Medical and dental coverage; or
- Waive his or her COBRA rights.

## *Example of Benefits Offered Under One Plan:*

A qualified beneficiary was covered under the employer's plan which provides coverage for both medical and dental benefits. Similarly situated active employees are not permitted to elect dental coverage unless they also elect medical coverage. The instruments governing the plan make clear that medical and dental benefits are offered under one plan. In this example, the qualified beneficiary may elect:

- Medical and dental coverage; or
- Waive his or her COBRA rights.

If it is not clear from the instruments governing the health benefits whether the benefits are provided under one plan or more than one plan, or if there are not instruments governing the arrangement, all such health care benefits provided by a single entity constitute a single Health Plan.

Qualified beneficiaries must be given the same rights as similarly situated active employees. Where similarly situated active employees are permitted to change between health plans or add dependents to the plan during an annual open enrollment, qualified beneficiaries must be permitted to do the same.

## **Under COBRA, what coverage must be offered to a qualified beneficiary who is relocating?**

If a qualified beneficiary participates in a region-specific benefit package (such as an HMO) that will not service his or her health needs in the area to which they are relocating (regardless of the reason for the relocation), the qualified beneficiary must be given an opportunity to elect alternative coverage that the employer makes available to active employees. While the employer is not required to put a plan in place to accommodate the relocated qualified beneficiary, it must make available coverage which it has available, even if that qualified beneficiary was not eligible for that coverage while an active employee.

## **How are COBRA rights impacted when an employee terminates a spouse's or dependent's coverage in anticipation of divorce?**

Where a covered employee discontinues the coverage of a spouse in anticipation of a divorce or legal separation, the plan is required to make COBRA coverage available effective upon the date of the divorce or legal separation. The plan is not required to make coverage available for any period before the date of the divorce or legal separation.

The qualified beneficiary must notify the plan administrator within 60 days of the divorce or legal separation in order to be eligible for COBRA continuation coverage.

## **Are health savings accounts subject to COBRA?**

Health savings accounts are not subject to COBRA. In December 2003, the U.S. Department of Treasury released Notice 2004-2, which states that "Like Archer MSAs, health savings accounts are not subject to COBRA continuation coverage."

However, employer-sponsored high deductible health plans offered together with a health savings account are subject to COBRA.

# COBRA Common Questions: Administration

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## **Are health flexible spending accounts subject to COBRA?**

The 1999 Proposed COBRA Regulations contain some guidance on whether a health flexible spending account satisfies the definition of “group health plan” for purposes of COBRA. Where an employee has underspent his or her account at the time of the qualifying event, the employee is entitled to elect to continue the health flexible spending account under COBRA for the remainder of the Section 125 Plan year. However, the employee is not entitled to continue their contributions to the health flexible spending account during the full period of COBRA continuation coverage (that is, 18 months). According to the Internal Revenue Service “the purposes of COBRA are not furthered by requiring an employer to offer COBRA for a plan year if the amount that the employer could require to be paid for COBRA coverage for the plan year would exceed the maximum benefit that the qualified beneficiary could receive under the health flexible spending account.”

### *Example:*

Under a Section 125 Plan, an employer offers its employees a traditional medical insurance plan and allows its employees to contribute pre-tax dollars to a Health FSA. Employee elects to contribute \$2,000 during the 2012 calendar year. Employee terminates his employment effective July 1, 2012. To date, employee has not sought reimbursement from his Health FSA. Under COBRA, this employee is entitled to continue his Health FSA through the end of December 2012.

## **Can a qualified beneficiary revoke a COBRA waiver?**

If a qualified beneficiary waived COBRA continuation coverage, he or she may revoke the waiver at any time during the initial election period. COBRA continuation coverage is effective on the date the waiver is revoked.

## **What penalties exist for COBRA non-compliance?**

COBRA provides civil and tax penalties for noncompliance. COBRA's civil sanctions allow participants and beneficiaries recourse if the plan fails to provide continued coverage to which the participant or beneficiary is entitled. Additionally, a plan administrator may be personally liable to a plan participant or beneficiary for up to \$100 per day for noncompliance.

COBRA's tax sanctions include a nondeductible excise tax of \$100 per day for each beneficiary affected by a failure during the noncompliance period. The noncompliance period begins on the date of the failure and ends six months after the last day of the otherwise applicable COBRA coverage period or the date when the failure is corrected, whichever is earlier. The maximum tax is \$200 per day if multiple violations occur as a result of a single qualifying event involving more than one qualified beneficiary.

The excise tax does not apply if a failure is due to reasonable cause and not willful neglect, provided the failure is corrected within 30 days of when the failure was or could have been known.

Additionally, a tax is not imposed if individuals liable for the tax did not or could not have known, by exercising reasonable diligence, that a failure existed.

## **May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?**

The right to COBRA coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

**Model General Notice Of COBRA Continuation Coverage Rights**  
**(For use by single-employer group health plans)**

**\*\* Continuation Coverage Rights Under COBRA\*\***

**Introduction**

You're getting this notice because you recently gained coverage under a group health plan (the Plan). This notice has important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. **This notice explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect your right to get it.** When you become eligible for COBRA, you may also become eligible for other coverage options that may cost less than COBRA continuation coverage.

The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage can become available to you and other members of your family when group health coverage would otherwise end. For more information about your rights and obligations under the Plan and under federal law, you should review the Plan's Summary Plan Description or contact the Plan Administrator.

**You may have other options available to you when you lose group health coverage.** For example, you may be eligible to buy an individual plan through the Health Insurance Marketplace. By enrolling in coverage through the Marketplace, you may qualify for lower costs on your monthly premiums and lower out-of-pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

**What is COBRA continuation coverage?**

COBRA continuation coverage is a continuation of Plan coverage when it would otherwise end because of a life event. This is also called a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage [*choose and enter appropriate information: must pay or aren't required to pay*] for COBRA continuation coverage.

If you're an employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of the following qualifying events:

- Your hours of employment are reduced, or
- Your employment ends for any reason other than your gross misconduct.

If you're the spouse of an employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of the following qualifying events:

- Your spouse dies;
- Your spouse's hours of employment are reduced;
- Your spouse's employment ends for any reason other than his or her gross misconduct;
- Your spouse becomes entitled to Medicare benefits (under Part A, Part B, or both); or
- You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they lose coverage under the Plan because of the following qualifying events:

- The parent-employee dies;
- The parent-employee's hours of employment are reduced;
- The parent-employee's employment ends for any reason other than his or her gross misconduct;
- The parent-employee becomes entitled to Medicare benefits (Part A, Part B, or both);
- The parents become divorced or legally separated; or
- The child stops being eligible for coverage under the Plan as a "dependent child."

*[If the Plan provides retiree health coverage, add the following paragraph:]*

Sometimes, filing a proceeding in bankruptcy under title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with respect to [*enter name of employer sponsoring the Plan*], and that bankruptcy results in the loss of coverage of any retired employee covered under the Plan, the retired employee will become a qualified beneficiary. The retired employee's spouse, surviving spouse, and dependent children will also become qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

### **When is COBRA continuation coverage available?**

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. The employer must notify the Plan Administrator of the following qualifying events:

- The end of employment or reduction of hours of employment;
- Death of the employee;
- [*add if Plan provides retiree health coverage: Commencement of a proceeding in bankruptcy with respect to the employer;*]; or
- The employee's becoming entitled to Medicare benefits (under Part A, Part B, or both).

**For all other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the**

**Plan Administrator within 60 days [or enter longer period permitted under the terms of the Plan] after the qualifying event occurs. You must provide this notice to: [Enter name of appropriate party]. [Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.]**

### **How is COBRA continuation coverage provided?**

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each qualified beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage on behalf of their spouses, and parents may elect COBRA continuation coverage on behalf of their children.

COBRA continuation coverage is a temporary continuation of coverage that generally lasts for 18 months due to employment termination or reduction of hours of work. Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.

There are also ways in which this 18-month period of COBRA continuation coverage can be extended:

#### ***Disability extension of 18-month period of COBRA continuation coverage***

If you or anyone in your family covered under the Plan is determined by Social Security to be disabled and you notify the Plan Administrator in a timely fashion, you and your entire family may be entitled to get up to an additional 11 months of COBRA continuation coverage, for a maximum of 29 months. The disability would have to have started at some time before the 60th day of COBRA continuation coverage and must last at least until the end of the 18-month period of COBRA continuation coverage. [Add description of any additional Plan procedures for this notice, including a description of any required information or documentation, the name of the appropriate party to whom notice must be sent, and the time period for giving notice.]

#### ***Second qualifying event extension of 18-month period of continuation coverage***

If your family experiences another qualifying event during the 18 months of COBRA continuation coverage, the spouse and dependent children in your family can get up to 18 additional months of COBRA continuation coverage, for a maximum of 36 months, if the Plan is properly notified about the second qualifying event. This extension may be available to the spouse and any dependent children getting COBRA continuation coverage if the employee or former employee dies; becomes entitled to Medicare benefits (under Part A, Part B, or both); gets divorced or legally separated; or if the dependent child stops being eligible under the Plan as a dependent child. This extension is only available if the second qualifying event would have caused the spouse or dependent child to lose coverage under the Plan had the first qualifying event not occurred.

## **Are there other coverage options besides COBRA Continuation Coverage?**

Yes. Instead of enrolling in COBRA continuation coverage, there may be other coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage. You can learn more about many of these options at [www.healthcare.gov](http://www.healthcare.gov).

## **If you have questions**

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to the contact or contacts identified below. For more information about your rights under the Employee Retirement Income Security Act (ERISA), including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit [www.dol.gov/ebsa](http://www.dol.gov/ebsa). (Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website.) For more information about the Marketplace, visit [www.HealthCare.gov](http://www.HealthCare.gov).

## **Keep your Plan informed of address changes**

To protect your family's rights, let the Plan Administrator know about any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

## **Plan contact information**

*[Enter name of the Plan and name (or position), address and phone number of party or parties from whom information about the Plan and COBRA continuation coverage can be obtained on request.]*

# LEGISLATIVE BRIEF

Brought to you by Group Benefits Strategies

## Final COBRA Regulations: Notice & Disclosure Rules

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that employers provide employees and dependents who would otherwise lose group health benefits due to a qualifying event with an opportunity to continue group health insurance coverage. COBRA also requires that employers inform employees and their families covered under a health plan of their COBRA rights. In 2004, the Department of Labor (DOL) released final regulations on COBRA's notice and disclosure requirements, which became effective for plan years beginning on or after Nov. 26, 2004.

This Legislative Brief summarizes COBRA's notice and disclosure obligations contained in the DOL's final regulations and includes a chart outlining the timing and content requirements for the various COBRA notices.

### GENERAL NOTICE

- The final regulations include a model General Notice, clarify what information must be included within a General Notice, and establish a time period in which this information must be provided to individuals covered under the health plan.
- The regulations confirm that a single notice may be provided to the covered employee and spouse, if they reside at the same address. However, hand-delivery of the General Notice at the workplace to the covered employee does not constitute delivery to the spouse.
- The plan administrator may incorporate the General Notice within the summary plan description provided the summary plan description a) contains all of the information required to be included within the General Notice, and b) is delivered in a manner that complies with the delivery rules applicable to COBRA notices. *Note: the rules related to electronic delivery of COBRA notices are more stringent than those applicable to summary plan descriptions.*

### EMPLOYER OBLIGATIONS

- The employer is required to notify the plan administrator of the occurrence of the following qualifying events: employee's death, termination of employment (other than by reason of gross misconduct), reduction of hours of employment, Medicare entitlement or employer filing of Chapter 11 bankruptcy.
- The employer is required to notify the plan administrator within 30 days of the later of the date of the qualifying event or the date on which the qualified beneficiary would lose coverage as a result of the qualifying event.
- The notice must include sufficient information to enable the plan administrator to determine the plan, covered employee, qualifying event and date of the qualifying event.

# Final COBRA Regulations: Notice & Disclosure Rules

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## PLAN ADMINISTRATOR OBLIGATIONS

- The regulations set forth timing and content requirements for election notices. A model election notice is also included. (Update: On May 8, 2013, the DOL issued an updated model election notice. The DOL updated the model notice to include information about coverage options that will be available under the health insurance exchanges, beginning in 2014.)
- Plan administrators are required to notify ineligible individuals that apply for COBRA that continuation coverage is not available.
- Plan administrators are also obligated to notify qualified beneficiaries when continuation coverage terminates before the end of the maximum period for such coverage.

## QUALIFIED BENEFICIARY & COVERED EMPLOYEE OBLIGATIONS

- Covered employees and qualified beneficiaries are required to follow the reasonable procedures established by the plan administrator.
- Reasonable procedures should be described within the summary plan description and should specify a) the person designated to receive the notice, b) the means the qualified beneficiary must use for giving notice, and c) the required content of the notice. Plans may require the employee or qualified beneficiary to use a specific form, if the form is readily available without cost.
- Qualified beneficiaries are required to notify the plan administrator within 60 days of the later of a) the date of any of the following qualifying events, b) the date on which they would lose coverage as a result of the qualifying event, or c) the date on which they were first notified of their obligation and of the procedures to provide notice:
  1. Divorce or legal separation of a covered employee from his or her spouse; and
  2. Dependent child's loss of dependent status under the plan.
- Qualified beneficiaries are required to notify the plan administrator within 60 days of the date of a second qualifying event that would entitle the qualified beneficiary to extend continuation coverage beyond 18 months.
- Qualified beneficiaries that are determined to be disabled by the Social Security Administration (SSA) as of or within 60 days of a termination or reduction in hours of employment are required to notify the plan administrator within 60 days of the receipt of the SSA determination and before the end of the original 18-month continuation period.<sup>1</sup>
- Qualified beneficiaries provided additional coverage as a result of a disability are required to notify the plan administrator within 30 days of any final determination that the qualified beneficiary is no longer disabled.

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<sup>1</sup>Qualified beneficiaries who were determined disabled by the SSA prior to the qualifying event are considered to meet the statutory requirement of being disabled "within the first 60 days of COBRA coverage." In this case, the qualified beneficiary is required to provide notice of the SSA disability determination within 60 days of the later of a) the date of the qualifying event, b) the date on which the qualified beneficiary would lose coverage as a result of the qualifying event, or c) the date on which the qualified beneficiary is informed of its obligation and of the procedures to provide notice of the disability.

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# Final COBRA Regulations: Notice & Disclosure Rules

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## FINAL COBRA REGULATIONS & MODEL DOL FORMS

- To view the final regulations visit [www.dol.gov/ebsa/regs/fedreg/final/2004011796.pdf](http://www.dol.gov/ebsa/regs/fedreg/final/2004011796.pdf)
- To view the model General Notice, including technical corrections, visit [www.dol.gov/ebsa/modelgeneralnotice.doc](http://www.dol.gov/ebsa/modelgeneralnotice.doc)
- To view the revised model Election Notice, including technical corrections, visit [www.dol.gov/ebsa/modelectionnotice.doc](http://www.dol.gov/ebsa/modelectionnotice.doc)

# Final COBRA Regulations: Notice & Disclosure Rules

## COBRA - Notice & Disclosure Rules

NOTICES	TIMING OF NOTICE	CONTENT REQUIREMENTS
General Notice	<p>Within 90 days after coverage begins.</p> <p><u>Note:</u> New dependents added after the employee's initial enrollment must be provided a General Notice within 90 days from the date their coverage begins.</p> <p><u>Note:</u> If a covered individual experiences a qualifying event within 90 days of becoming covered under the plan, an Election Notice should be provided to the covered individual. The General Notice isn't required.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant, and shall contain all of the following:</p> <ol style="list-style-type: none"> <li>1. Name of plan,</li> <li>2. Name, address, and telephone number of party responsible for administering COBRA,</li> <li>3. General description of coverage,</li> <li>4. Classes of individuals that can be qualified beneficiaries (QBs),</li> <li>5. Explanation of the types of qualifying events,</li> <li>6. Obligation of employer to notify plan administrator of certain qualifying events,</li> <li>7. Maximum coverage periods, including ability to qualify for extensions,</li> <li>8. Description of the applicable premium that will be changed,</li> <li>9. Explain QB's responsibility to notify employer of certain qualifying events (divorce, legal separation, loss of dependent status, disability determination by SSA),</li> <li>10. Explain QB's continuing obligation to notify employer of a change in address or eligibility (becoming enrolled in Medicare, death of covered employee, divorce, legal separation, determined disabled by the SSA), and</li> <li>11. A statement that the notice does not fully describe all COBRA rights and that further information can be received from the employer or plan administrator.</li> </ol>
Employer's Notice to Plan Administrator of Qualifying Event	<p>Within 30 days after a qualifying event or loss of health coverage due to the qualifying event, whichever is later.</p>	<ol style="list-style-type: none"> <li>1. Plan name,</li> <li>2. Covered employee/QB,</li> <li>3. Type of qualifying event, and</li> <li>4. Date of the qualifying event (including date of loss of coverage).</li> </ol>
Notice of Unavailability of COBRA	<ul style="list-style-type: none"> <li>• Within 14 days of receipt of the notice of qualifying event.</li> <li>• Where the employer is also the plan administrator, within 44 days of the later of a) the date of the qualifying event, or b) the date on which the QB loses coverage due to the qualifying event.</li> </ul>	<p>In the event that the administrator receives a notice of a qualifying event from an individual not entitled to COBRA, the plan administrator must notify the individual of the reason why the individual is not entitled to COBRA.</p>

# Final COBRA Regulations: Notice & Disclosure Rules

<p>Early Termination Notice</p>	<p>As soon as practicable following the administrator's determination that continuation coverage shall terminate.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ol style="list-style-type: none"> <li>1. The reason COBRA has been terminated earlier than the end of the maximum coverage period,</li> <li>2. The date of termination of coverage, and</li> <li>3. Description of any rights the QB may have under the plan or under applicable law to elect alternative group or individual coverage, such as a conversion right.</li> </ol>
<p>Plan Administrator's Notice to Covered Individual of Right to Elect COBRA</p>	<ul style="list-style-type: none"> <li>• Within 14 days of receipt of the notice of qualifying event.</li> <li>• Where the employer is also the plan administrator, within 44 days of the later of a) the date of the qualifying event, or b) the date on which the QB loses coverage due to the qualifying event.</li> </ul>	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ol style="list-style-type: none"> <li>1. Name of the plan,</li> <li>2. Name, address, and telephone number of the COBRA administrator,</li> <li>3. Identification of the qualifying event,</li> <li>4. Identification of each QB entitled to elect COBRA,</li> <li>5. The date coverage will terminate unless COBRA is elected,</li> <li>6. Explanation of how and when each QB may independently elect COBRA,</li> <li>7. The plan's procedures for electing COBRA, including the time period in which the election must be made and the date the election must be made,</li> <li>8. An explanation of the consequences of failing to elect or waiving COBRA, including any impact on future rights to portability, guaranteed access to individual health coverage, and special enrollment, and an explanation of how to revoke a waiver of COBRA,</li> <li>9. A description of the coverage available under COBRA, including the date COBRA would commence (may refer to SPD),</li> <li>10. An explanation of the maximum period for which COBRA will be available, including the termination date and the events that might cause COBRA to be terminated earlier,</li> <li>11. An explanation of when COBRA may be extended due to a second qualifying event or determination of disability, including the QB's obligation to provide the plan administration with notice of the events,</li> <li>12. Applicable COBRA premium for each QB,</li> <li>13. A description of the due dates for payments, the QB's right to pay on a monthly basis, grace periods, the address to which payments should be sent, and the consequences of delayed payment or non-payment,</li> <li>14. An explanation of the importance of keeping the plan administrator informed of the current addresses of all beneficiaries under the plan, and</li> <li>15. A statement that the notice does not fully describe COBRA or other rights under the plan and that more complete information regarding such rights is available in the plan's SPD or from the plan administrator,</li> </ol>

# Final COBRA Regulations: Notice & Disclosure Rules

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<p>Employee/Qualified Beneficiary's Notice of Qualifying Event to Plan Administrator</p>	<ul style="list-style-type: none"><li>• Within 60 days after the qualifying event or loss of health coverage, whichever is later (e.g. divorce, legal separation, or loss of dependent status).</li><li>• During original 18 months and within 60 days of determination of disability by SS administration.</li><li>• Within 30 days QB is no longer disabled.</li></ul>	<p>A plan may establish reasonable requirements for the content of any notice provided by the employee or QB. A notice provided within the time frames stated that includes the following must be considered effective:</p> <ol style="list-style-type: none"><li>1. Plan name,</li><li>2. Name of covered employee and QBs,</li><li>3. Qualifying event or disability, and</li><li>4. Date of qualifying event.</li></ol>
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This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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