

# COMPLIANCE OVERVIEW

Provided by Rose & Kiernan, Inc.

## COBRA Common Questions – Administration

The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows individuals to continue their group health plan coverage in certain situations. Specifically, COBRA requires group health plans to offer continuation coverage to covered employees and dependents when coverage would otherwise be lost due to certain specific events, such as a termination of employment, a divorce or a dependent child's loss of eligibility under the terms of the plan.

COBRA sets rules for how and when continuation coverage must be offered and provided, how employees and their families may elect and pay for continuation coverage, and when continuation coverage may be terminated.

This Compliance Overview includes answers to commonly asked questions regarding the administration of COBRA coverage.

### HIGHLIGHTS

#### COBRA BASICS

- COBRA allows certain employees, spouses and dependents to temporarily continue their health coverage at group rates.
- COBRA coverage must be the same as the coverage that is available to similarly situated active employees who are not receiving COBRA benefits.

#### MAXIMUM COVERAGE PERIODS

- **18 months** – employee's termination of employment or reduction in hours
- **36 months** – employee's death, divorce or legal separation, employee's entitlement to Medicare or child loses eligibility under terms of plan
- **29 months** – employee's termination of employment or reduction in hours followed by a disability determination

#### LINKS AND RESOURCES

- The Department of Labor's (DOL) COBRA continuation coverage [webpage](#).
- [An Employer's Guide to Group Health Continuation Coverage Under COBRA](#) – DOL resource
- The DOL's model COBRA forms – [Model General Notice](#) and [Model Election Notice](#)

This Compliance Overview 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.



## LENGTH OF COBRA COVERAGE

### ***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 a 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."

### ***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 (for example, 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 (for example, 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.

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

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 another health plan; 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.

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.

## **COBRA PREMIUMS**

### ***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

***Compliance Reminder:*** 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.

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 (for example, 102 percent of the plan's cost);
- 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).

### ***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.

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.

## **COBRA COVERAGE REQUIREMENTS**

### ***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.

Also, 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 he or she was 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.

***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.

***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.

***If a qualified beneficiary signs up for COBRA continuation coverage, can he or she switch to coverage through a health insurance Exchange (or Marketplace)? What about if the qualified beneficiary chooses Marketplace coverage and wants to switch to COBRA continuation coverage?***

If a qualified beneficiary signs up for COBRA continuation coverage, he or she can switch to a Marketplace plan during a Marketplace open enrollment period. The qualified beneficiary can also end COBRA continuation coverage early and switch to a Marketplace plan if the qualified beneficiary has another qualifying event (such as marriage or birth of a child) through a "special enrollment period." If a qualified beneficiary terminates COBRA continuation coverage early without another qualifying event, he or she will have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once a qualified beneficiary has exhausted COBRA continuation coverage and the coverage expires, he or she will be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended. If a qualified beneficiary signs up for Marketplace coverage instead of COBRA continuation coverage, he or she cannot later switch to COBRA continuation coverage under any circumstances.

## POSSIBLE PENALTIES

### *What penalties exist for COBRA noncompliance?*

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.