Health Care Plans and COBRA

COBRA provides workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances, such as any of the following:

- Voluntary or involuntary job loss.
- Reduction in the hours worked.
- Transition between jobs.
- Death.
- Divorce.
- Other life events.

Covered Employers

Employers with 20 or more employees are usually required to offer COBRA coverage and to notify their employees of the availability of such coverage. COBRA applies to plans maintained by private-sector employers and sponsored by most state and local governments.

Covered Employees

A covered employee under COBRA includes anyone who is covered under a group health plan by virtue of an employment relationship with the employer. For example, retirees or former employees might be covered by the plan because of their former employment with the employer. Although self-employed individuals, independent contractors, and directors do not have to be counted as employees under the small-business category, they are eligible for COBRA if their relationship to the employer makes them eligible to be covered by the employer’s health insurance plan. However, employees that are eligible for the plan are not considered covered employees unless they are enrolled in the plan.

Eligibility for COBRA Benefits

A group health plan is required to offer COBRA continuation coverage only to qualified beneficiaries after a qualifying event has occurred. A ***group health plan*** is any arrangement that an employer establishes or maintains to provide employees or their families with medical care, whether it is provided through insurance, by a health maintenance organization, out of the employer’s assets, or through any other means. ***Medical care*** includes, but is not limited to:

- Inpatient and outpatient hospital care.
- Physician care.
- Surgery and other major medical benefits.
- Prescription drugs.

- Dental and vision care.

Plan Coverage

COBRA only applies to group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

The law does not apply, however, to plans sponsored by the federal government or by churches and certain church-related organizations.

Important: Group health plans covered by COBRA that are sponsored by private-sector employers are generally welfare plans under the Employee Retirement Income Security Act (ERISA) and therefore subject to ERISA's other requirements. Under ERISA, group health plans must be administered by a plan administrator, who is usually named in the plan documents. Many group health plans are administered by the employer that sponsors the plan, but group health plans are also frequently administered, in whole or in part, by another individual or organization separate from the employer, such as a professional benefits administration firm. Carrying out the requirements of COBRA is the direct responsibility of the plan administrator.

Qualified Beneficiaries

A ***qualified beneficiary*** is an individual who was covered by a group health plan on the day before a qualifying event occurred and who is either an employee, the employee's spouse or former spouse, or the employee's dependent child. In certain cases involving the bankruptcy of the employer, a retired employee, the retired employee's spouse (or former spouse), and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during a period of continuation coverage is automatically considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

Qualifying Events

Qualifying events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA. A plan, at its discretion, may provide longer periods of continuation coverage.

Qualifying events occur in three major categories:

- **Employee.** A qualifying event affecting an employee may be:
    - Voluntary or involuntary termination of employment for reasons other than gross misconduct (**Note:** Gross misconduct is not defined by statute, and does not including ordinary misconduct such as excessive absences or poor performance. The burden is on the employer to defend an assertion of gross misconduct).
    - Reduction in the number of hours of employment.
- **Spouse.** A qualifying event affecting an spouse may be:
    - Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct.
    - Reduction in the hours worked by the covered employee.
    - Covered employee experiences a loss in coverage upon Medicare entitlement.
    - Divorce or legal separation from the covered employee.
    - Death of the covered employee.
- **Dependent child.** A qualifying event affecting a dependent child may be:
    - The same events listed for spouse, above.
    - Loss of dependent child status under the plan rules.

Note: The interaction between the Medicare secondary payor rules and COBRA is often misunderstood by employers. The spouse and dependent become eligible for COBRA if the employee experiences or the plan provides for a loss of coverage upon an employee becoming entitled to Medicare. Generally, this would only be the case for employers with less than 20 employees or for certain multiple employer group health plans. For employers with 20 or more employees, an employee's entitlement to Medicare does not generally result in a loss of eligibility under the employer's plan.

Eighteen-Month Events

Eighteen-month events apply to employees and may be characterized by the following:

- Any voluntary or involuntary termination other than for gross misconduct.
- Reduction in hours to below the minimum required to participate in the employer's plan.
- Labor strike.
- Leave of absence.
- Military leave.

Twenty-Nine-Month Events

Twenty-nine-month events apply to disabled employees, covered spouses, and dependents and may be characterized by the following:

- Any qualified beneficiary who is considered disabled according to Social Security guidelines.
- Individuals must be considered disabled by Social Security at the time of the event, not when COBRA is initiated. However, employers may make exceptions to this rule, as applications for Social Security disability

insurance are often initiated after the qualifying event to be retroactive to the qualifying event.

Thirty-Six-Month Events

Thirty-six-month events apply to covered spouses and dependents and may be characterized by the following:

- Employee’s death.
- Employee’s entitlement to or activation of Medicare, resulting in the family’s exclusion from the employer’s plan.
- Divorce or legal separation from a covered employee.
- Family member no longer considered a dependent under the employer’s plan (for example, a covered dependent child attaining age 26).

If a 36-month event occurs during an 18-month event, COBRA benefits may be extended to the 36th month from the original event date for dependents and spouses only.

Notice and Election Procedures

Employers are required to provide covered employees and their families with specific notices intended to help covered individuals to understand their COBRA rights. Clear rules must be established for how COBRA continuation is offered, how qualified beneficiaries make elections, and when the coverage may be terminated. Mandatory notices include the following:

- Summary plan description.
- COBRA general notice.
- COBRA qualifying event notice.
- COBRA election notice.
- COBRA notice of unavailability of continuation coverage.
- COBRA notice of early termination of continuation coverage.

Summary Plan Description (SPD)

A plan’s summary plan description (SPD) is required to include a detailed and comprehensive explanation of COBRA continuation rights under the plan. The SPD must include instructions on the procedures to be followed if qualified beneficiaries are required to provide notice of secondary qualifying events. The rules for how to give a disability notice and a notice of no longer being disabled should be described in the plan’s SPD. Additionally, since different qualifying events can produce different COBRA continuation coverage start dates, details in the SPD must make it clear if continuation coverage will begin on the date of the qualifying event or on the date when coverage is lost.

ERISA requires group health plans to give each participant an SPD within 90 days after he or she first becomes a participant in a plan (or within 120 days after the plan is first subject to the reporting and disclosure provisions of ERISA). In addition, if there are material changes to the plan, the plan must give

participants a summary of material modifications (SMM) not later than 210 days after the end of the plan year in which the changes become effective. If the change is a material reduction in covered services or benefits, the SMM must be furnished not later than 60 days after the reduction is adopted. A participant or beneficiary covered under the plan may request a copy of the SPD and any SMMs (as well as any other plan documents), which must be provided within 30 days of a written request.

SPDs must be provided at least every five years (no later than 210 days of the last day of the fifth year after a change is made) if there have been material changes and must incorporate all changes made within that five-year period. If no material changes were made, then the SPD must be furnished every 10 years (within 210 days after the last day of the 10th plan year).

COBRA General Notice

A COBRA general notice must be furnished to covered employees and spouses within the first 90 days of coverage under the plan. Group health plans can satisfy this requirement by including the general notice in the plan's SPD and giving the SPD to the employee and to the spouse within this time limit. The general notice must include the following:

- The name of the plan and the name, address, and telephone number of someone whom the employee and spouse can contact for more information on COBRA and the plan.
- A general description of the continuation coverage provided under the plan.
- An explanation of what qualified beneficiaries must do to notify the plan of qualifying events or disabilities.
- An explanation of the importance of keeping the plan administrator informed of addresses of the participants and beneficiaries.
- A statement that the general notice does not fully describe COBRA or the plan and that more complete information is available from the plan administrator and in the SPD.

For a sample COBRA General Notice click here: English Spanish

COBRA Qualifying Event Notice

A COBRA qualifying event notice must be given as described in the SPD. Before a group health plan must offer continuation coverage, a qualifying event must occur. The group health plan is not required to act until it receives an appropriate notice of such a qualifying event.

The employer is required to notify the plan administrator within 30 days if the qualifying event is any of the following:

- Termination or reduction in hours of employment of the covered employee.

- Death of the covered employee.
- Covered employee's becoming entitled to Medicare.

The covered employee or one of the qualified beneficiaries is responsible for notifying the plan administrator within 60 days of the qualifying event if the qualifying event is:

- Divorce.
- Legal separation.
- A child's loss of dependent status under the plan.

Once the plan administrator has received notice of a qualifying event, the employee and beneficiaries must be provided with an election notice in-person or by first class mail within 14 days.

COBRA Election Notice

A COBRA election notice is provided to enable the qualified beneficiary to inform the plan administrator that the qualified beneficiary wants to elect continuation coverage. Each qualified beneficiary may independently elect COBRA coverage. A covered employee or the covered employee's spouse may elect COBRA coverage on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child. Qualified beneficiaries must be given at least 60 days for the election. This period is measured from the later of the date when coverage is lost or the date the COBRA election notice is provided by the employer or plan administrator.

The initial premium payment must be made within 45 days after the date of the COBRA election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of the loss of coverage due to the qualifying event. Premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments. Payment is considered to be made on the date it is sent to the plan.

The plan is not obligated to send monthly premium notices.

The Department of Labor has developed a model COBRA Election Notice which may be downloaded from the Department of Labor Employee Benefits Administration website. This model notice requires the plan administrator to fill in the appropriate plan information.

COBRA Notice of Unavailability of Coverage

A COBRA notice of unavailability of coverage is the communication delivered when a plan has determined that an individual is not entitled to coverage he or she is requesting.

Group health plans may sometimes deny a request for continuation coverage or for an extension of continuation coverage when the plan determines the

requesting person is not entitled to receive continuation. If a group health plan makes the decision to deny a request for continuation coverage, the plan must give the individual a notice of unavailability of continuation coverage. The notice must be provided within 14 days after the request is received, and the notice must explain the reason for denying the request.

COBRA Notice of Early Termination of Continuation Coverage

A COBRA notice of early termination of continuation coverage is the communication delivered when a plan has determined that a qualified beneficiary is no longer entitled to coverage.

Continuation coverage must generally be made available for a maximum period (18, 29, or 36 months). The group health plan may terminate continuation coverage early, however, the following reasons:

- Premiums are not paid in full on a timely basis.
- The employer ceases to maintain any group health plan.
- A qualified beneficiary begins coverage under another group health plan after electing continuation coverage (as long as that plan does not impose an exclusion or limitation with respect to a pre-existing condition of the qualified beneficiary).
- A qualified beneficiary becomes entitled to Medicare benefits after electing continuation coverage.
- A qualified beneficiary engages in conduct that would justify the plan in terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage (such as fraud).

Note: ***Insignificant underpayment*** is any unpaid amount up to $50, or less than 10 percent of the amount due. A plan administrator must provide additional notice of underpayment and allow at least 30 days for the qualified beneficiary to make the payment whole before terminating coverage. Failure to provide this additional notice and waiting period means coverage must remain in force.

When a group health plan decides to terminate continuation coverage early for any of these reasons, the plan must give the qualified beneficiary a notice of early termination. The notice must be given as soon as practicable after the decision is made, and it must describe the date coverage will terminate, the reason for termination, and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage, such as a right to convert to an individual policy.

Special Rules for Multi-Employer Plans

A multi-employer plan may adopt its own uniform time limits for the qualifying event notice or the election notice. A multi-employer plan also may choose not to require employers to provide qualifying event notices, and instead to have the plan administrator determine when a qualifying event has occurred. Any special

multi-employer plan rules must be set out in the plan’s documents, including the SPD.

Election Procedures

Each qualified beneficiary must be given at least 60 days to choose whether or not to elect COBRA coverage, beginning from the later of the date the election notice is provided, or the date on which the qualified beneficiary would otherwise lose coverage under the group health plan due to the qualifying event. The qualified beneficiary must be given 45 days to pay after the election is made.

Each qualified beneficiary must be given an independent right to elect continuation coverage. This means that when several individuals (such as an employee, his or her spouse, and their dependent children) become qualified beneficiaries due to the same qualifying event, each individual can make a different choice. The plan must allow the covered employee or the covered employee’s spouse, however, to elect continuation coverage on behalf of all of the other qualified beneficiaries for the same qualifying event. A parent or legal guardian of a qualified beneficiary must also be allowed to elect on behalf of a minor child.

If a qualified beneficiary waives continuation coverage during the election period, he or she must be permitted to later revoke the waiver of coverage and elect continuation coverage, as long as the revocation is done before the end of the election period. However, if a waiver is later revoked, the plan is permitted to make continuation coverage begin on the date the waiver was revoked.

Benefits Under Continuation Coverage

COBRA continuation coverage must be identical to the coverage that is currently available under the plan to similarly situated individuals who are covered under the plan and not receiving continuation coverage. Generally, this is the same coverage that the qualified beneficiary had immediately before the qualifying event.

A qualified beneficiary receiving continuation coverage must receive the same benefits, choices, and services that a similarly situated participant or beneficiary is currently receiving under the plan, such as the right during an open enrollment season to choose among available coverage options. The qualified beneficiary is also subject to the same plan rules and limits that would apply to a similarly situated participant or beneficiary, such as co-payment requirements, deductibles, and coverage limits. The plan’s rules for filing benefit claims and appealing any claims denials also apply.

Any changes made to the plan’s terms that apply to similarly situated active employees and their families will also apply to qualified beneficiaries receiving COBRA continuation coverage. If a child is born to or adopted by a covered employee during a period of continuation coverage, the child is automatically

considered to be a qualified beneficiary receiving continuation coverage. The plan must allow the child to be added to the continuation coverage.

Length of COBRA Coverage

Maximum Periods

COBRA requires that continuation coverage extend from the date of the qualifying event for a limited period of 18 or 36 months. The length of time for which continuation coverage must be made available (the ***maximum period*** of continuation coverage) depends on the type of qualifying event that gave rise to the COBRA rights. A plan, however, may provide longer periods of coverage beyond the maximum period required by law.

When the qualifying event is the end of employment or reduction of the employee's hours, and the employee became entitled to Medicare less than 18 months before the qualifying event, COBRA coverage for the employee's spouse and dependents can last until 36 months after the date the employee becomes entitled to Medicare. For example, if a covered employee becomes entitled to Medicare eight months before the date his or her employment ends (termination of employment is the COBRA qualifying event), COBRA coverage for the employee's spouse and children would last 28 months (36 months minus eight months).

When the qualifying event is the covered employee's termination of employment (for reasons other than gross misconduct) or reduction in hours of work, qualified beneficiaries must be provided a maximum of 18 months of continuation coverage.

For all other qualifying events, qualified beneficiaries must be provided 36 months of continuation coverage.

Extension of 18-Month Period of Continuation Coverage

Individuals may be entitled to an extension of the 18-month maximum period of continuation coverage when either of the following occur:

- One of the qualified beneficiaries is disabled.
- A second qualifying event occurs.

Disability requires one of the qualified beneficiaries in a family to be disabled and meet certain requirements. All of the qualified beneficiaries are then entitled to an 11-month extension of the maximum period of continuation coverage (for a total maximum period of 29 months of continuation coverage). The plan can charge qualified beneficiaries an increased premium, up to 150 percent of the cost of coverage, during the 11-month disability extension.

The following rules apply:

- The disabled qualified beneficiary must be determined by the Social Security Act (SSA) to be disabled at some time before the 60th day of continuation coverage.
- The disability must continue during the rest of the initial 18-month period of continuation coverage.

The disabled qualified beneficiary must notify the plan of the SSA determination. The plan can set a time limit for providing this notice of disability, but the time limit cannot be shorter than 60 days, starting from the latest of any of the following:

- The date on which SSA issues the disability determination.
- The date on which the qualifying event occurs.
- The date on which the qualified beneficiary loses (or would lose) coverage under the plan because of the qualifying event.
- The date on which the qualified beneficiary is informed, through the furnishing of either the SPD or the COBRA general notice, of the responsibility to notify the plan and the procedures for doing so.

Note: The right to the disability extension may be terminated if the SSA determines that the qualified beneficiary is no longer disabled, and the plan can require disabled qualified beneficiaries to provide notice when such a determination is made. The plan must give the qualified beneficiaries at least 30 days after the SSA determination to provide such notice.

Second Qualifying Event

A second qualifying event may allow for an extension to a total maximum continuation period of 36 months if the qualified beneficiaries experience a second qualifying event that is any of the following:

- Death of the covered employee.
- Divorce or legal separation of the covered employee and spouse.
- Medicare entitlement.
- Loss of dependent child status under the plan.

The second event can be a second qualifying event only if it would have caused the qualified beneficiary to lose coverage under the plan in the absence of the first qualifying event.

The plan may set a time limit for providing this second notice and publish it in the SPD; however, the time limit cannot be shorter than 60 days from the latest of any of the following:

- The date on which the qualifying event occurs.
- The date on which the qualified beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event.

- The date on which the qualified beneficiary is informed, through the furnishing of either the SPD or the COBRA general notice, of the responsibility to notify the plan and the procedures for doing so.

Loss of Coverage

Termination of Coverage in Anticipation of a Qualifying Event

If an employee discontinues the coverage of a spouse or dependent in anticipation of an event, such as a divorce or legal separation, a plan is required to make COBRA coverage available as of the date of divorce or legal separation, but not for any prior period. The qualified beneficiary will generally be entitled to the coverage that the qualified beneficiary had before the qualifying event. However, if between the date of the elimination or reduction in coverage and the date of the qualifying event the coverage is modified for similarly situated non-COBRA beneficiaries, the modified coverage must be made available to the qualified beneficiary.

Military Leave

If an employee is called to active military duty, and the health plan under which the employee is covered is subject to COBRA and the employer does not voluntarily maintain continuation coverage for employees, then the employee will experience a qualifying event. The plan administrator must then offer the employee and the employee’s covered dependents the right to elect COBRA coverage. Qualified beneficiaries must receive a notice of their COBRA rights. Employers that voluntarily maintain coverage under their health plans for employees on military duty are not required to offer COBRA.

The Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) provides for health benefit continuation for people who are absent from work to serve in the military, even when COBRA does not cover the employer. Under USERRA, all employer-sponsored health care plans are required to provide COBRA-type coverage for up to 24 months after the employee’s absence begins due to military service or for the period of uniformed service. Specifically, the maximum period of coverage for an employee and their dependents is the lesser of 24 months beginning on the date the employee’s absence began or the day after the date on which the employee failed to apply for or return to a position of employment. Additionally, employees or dependents that elect this coverage may be required to pay a premium similar to COBRA (no more than 10 percent of the full premium under the plan). However, a person who performs military service for less than 31 days may not be required to pay more than the employee share, if any, for coverage.

Employee Moves

A COBRA beneficiary who moves outside the area served by an employer's region-specific plan — for example, a health maintenance organization (HMO) — must be provided an opportunity under special rules to elect alternative coverage available to any other active employee of the employer that can be extended to the place of relocation.

However, employers are not required to incur extraordinary costs to extend coverage to qualified beneficiaries in areas with no active employees. Additionally, there is no requirement to offer coverage where all coverage is region-specific and cannot be extended to the place of relocation.

Costs of Continuation Coverage

Beneficiaries may be required to pay for COBRA coverage. Premiums cannot exceed 102 percent of the cost to the plan for similarly situated individuals who have not incurred a qualifying event, including both the portion paid by employees and any portion paid by the employer before the qualifying event, plus 2 percent for administrative costs.

For qualified beneficiaries receiving the 11-month disability extension of coverage, the premium for those additional months may be increased to 150 percent of the plan's total cost of coverage.

COBRA premiums may be increased if the costs to the plan increase but generally must be fixed in advance of each 12-month premium cycle. The plan must allow qualified beneficiaries to pay premiums monthly if they ask to do so, and the plan may allow them to make payments at other intervals (weekly or quarterly).

The initial premium payment must be made within 45 days after the date of the COBRA election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of the loss of coverage due to the qualifying event. Premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments. Payment is considered to be made on the date it is sent to the plan.

If premiums are not paid by the first day of the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate coverage retroactively to the beginning of the period of coverage.

If the amount of the payment made to the plan is made in error but is not significantly less than the amount due, the plan is required to notify the qualified beneficiary of the deficiency and grant a reasonable period (for this purpose, 30 days is considered reasonable) to pay the difference. The plan is not obligated to send monthly premium notices.

COBRA beneficiaries remain subject to the rules of the plan and therefore must satisfy all costs related to co-payments and deductibles, and are subject to catastrophic and other benefit limits.

Withholding Money or Benefits

An employer or employee organization may not withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA continuation coverage, elects and pays for coverage, or allows the election period to expire.

An employer must not withhold money or other benefits to which a qualified beneficiary is otherwise entitled (by operation of law or other agreement) in order to compel payment for COBRA continuation coverage or to coerce the qualified beneficiary to give up rights to COBRA continuation coverage (including the right to use the full election period to decide whether to elect coverage). Such a withholding constitutes a failure to comply with the COBRA continuation coverage requirements. Furthermore, any purported waiver obtained by means of such a withholding is invalid.

Enforcement

COBRA administration is shared by three federal agencies. The U.S. Department of Labor handles questions about notification rights under COBRA for private-sector employees. The Department of Labor's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA. The Department of Health and Human Services handles questions relating to state and local government workers. The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage, and premiums in 26 C.F.R. Part 54, *Continuation Coverage Requirements Applicable to Group Health Plans*. The Departments of Labor and Treasury share jurisdiction for enforcement of these latter regulations.

Penalties

COBRA failures can result in costly taxes and penalties for employers.

To learn more, click this link: COBRA Penalties

Interaction with Other Federal Benefit Laws

COBRA continuation coverage laws are administered by several agencies. The Departments of Labor and the Treasury have jurisdiction over private-sector group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects state and local government health plans.

COBRA and the Family and Medical Leave Act

During a leave of absence covered by the federal Family and Medical Leave Act (FMLA), the employer and employee must maintain the employee's health benefits, with both parties contributing to the plan in the same manner as prior to the leave. However, if health benefits are canceled during the FMLA leave because the employee did not pay the premium within a 30-day grace period, the employee is not considered eligible for COBRA benefits.

COBRA coverage begins at the end of the FMLA leave or when the employer is made aware of the employee's intention not to return from leave.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA) requires that a group health plan or health insurance issuer provide a certificate of health coverage automatically to individuals entitled to elect COBRA continuation coverage, at a time no later than when a notice is required to be provided for a qualifying event under COBRA, and to individuals who elected COBRA coverage during the following times:

- Within a reasonable time after learning that the COBRA coverage has ceased.
- Within a reasonable time after the end of the grace period for payment of COBRA premiums.

Under HIPAA, upon certain events, group health plans and health insurance issuers are required to provide a special enrollment period during which an individual who previously declined coverage for themselves and/or their dependents may be allowed to enroll without having to wait until the next open season for enrollment, regardless of whether the plan has an open season or when the next open season begins. When an employee or dependent of an employee loses eligibility for other health coverage, a special enrollment right may be triggered. If the other health coverage was COBRA, special enrollment can be requested only after COBRA is exhausted.

Finally, under HIPAA, any pre-existing condition exclusion period that would apply under a group health plan or group health insurance coverage generally is reduced by an individual's number of days of creditable coverage that occurred without a break in coverage of 63 days or more. For this purpose, most health coverage, including COBRA coverage, is creditable coverage.

Social Security Act

When the qualifying event is the end of employment or reduction of the employee's hours, and the employee became entitled to Medicare less than 18 months before the qualifying event, COBRA coverage for the employee's spouse and dependents can last until 36 months after the date the employee becomes entitled to Medicare.

If one of the qualified beneficiaries in a family is disabled and meets certain requirements, all of the qualified beneficiaries in that family are entitled to an 11-month extension of the maximum period of continuation coverage (for a total maximum period of 29 months of continuation coverage). The plan can charge qualified beneficiaries an increased premium, up to 150 percent of the cost of coverage, during the 11-month disability extension.

The requirements are:

1. That the disabled qualified beneficiary must be determined by the Social Security Act (SSA) to be disabled at some time before the 60th day of continuation coverage.
2. That the disability must continue during the rest of the initial 18-month period of continuation coverage.

The disabled qualified beneficiary (or another person on his or her behalf) must also notify the plan of the SSA determination. The plan can set a time limit for providing this notice of disability, but the time limit cannot be shorter than 60 days, starting from the latest of:

1. The date on which the SSA issues the disability determination.
2. The date on which the qualifying event occurs.
3. The date on which the qualified beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event.
4. The date on which the qualified beneficiary is informed, through the furnishing of either the SPD or the COBRA general notice, of the responsibility to notify the plan and the procedures for doing so.

The right to the disability extension may be terminated if the SSA determines that the qualified beneficiary is no longer disabled, and the plan can require disabled qualified beneficiaries to provide notice when such a determination is made. The plan must give the qualified beneficiaries at least 30 days after the SSA determination in which to provide such notice.

The rules for how to give a disability notice and a notice of no longer being disabled should be described in the plan's SPD (and in the election notice for any offer of an 18-month period of continuation coverage).

State Mini-COBRA Laws

Many states have their own laws regarding continuation coverage. These states either offer continuation coverage to employees typically excluded under COBRA (employees of employers with less than 20 employees) or offer greater protections than those provided by COBRA.

Alternatives to COBRA

When an individual loses group health coverage, he or she may have health insurance options other than COBRA continuation. Loss of employer-sponsored

group health insurance may create a “special enrollment period” allowing enrollment in a spouse’s plan. Some individuals may also qualify for Medicaid. Since the Health Insurance Marketplace opened in January 2014, some individuals and families may find coverage that costs less than COBRA continuation coverage. Being offered COBRA continuation coverage will not limit a COBRA-qualified beneficiary’s eligibility for coverage or for a tax credit through the Marketplace. If a person elects Marketplace coverage instead of COBRA continuation coverage, it is not possible to switch back to COBRA continuation. Information about the Health Insurance Marketplace is available from www.healthcare.gov.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is located at 29 U.S.C. § 1161 et seq.

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