



## General COBRA Information

### **Who must comply with COBRA?**

All employers who employ 20 or more employees on the “typical” business day, and have done so on average for the last 12 calendar months, are subject to the COBRA provisions. This includes corporations, partnerships, tax-exempt organizations and state and local governments.

The Code’s COBRA provisions apply to all group health plans, except governmental plans, certain church plans, and small employer plans (under 20 employees). Health and Welfare plans, group insurance plans (indemnity, PPO’s and HMO’s), dental plans and vision plans are, under almost all cases, subject to COBRA. Also, Flexible Spending Accounts under Section 125 Cafeteria Plans are subject to COBRA because they “reimburse” the employee for medical expenses and thus become a medical plan by definition.

### **Plans that may be excluded from COBRA**

Life insurance or other death benefits are not considered medical benefits and are not subject to COBRA. In addition, short and long term disability insurance are not considered subject to COBRA provided the insurance constitutes income replacement.

### **Who is COBRA eligible?**

An individual eligible for COBRA is known as a Qualifying Beneficiary (QB). A QB is an individual who was covered under the plan on the day before the coverage is lost. QB’s will include the employee, spouse and dependent children. Each QB must be given the opportunity to continue coverage under the plan (under COBRA).

For example, a terminating employee covering his/her family under the group plan on the day coverage is lost may elect to continue coverage for the entire family, himself only, his spouse only, his dependent child(ren), or any combination thereof. Accordingly, a spouse who will lose coverage may choose to elect coverage even if the terminating employee elects to waive coverage for him/her self.

### **Events that trigger COBRA offering**

Events that trigger the offering of COBRA are known as Qualifying Events (QE). Depending on the type of QE, COBRA continuation may extend 18 or 36 months.

The following events trigger COBRA continuation for up to 18 months:

- Termination (voluntary or involuntary; may include “gross misconduct”)
- Reduction in hours worked (which results in a loss of coverage)

The events listed below trigger COBRA continuation of up to 36 months:

- Divorce or Legal Separation
- Death of employee
- Dependent ceasing to be a dependent as defined by the group plan
- Entitlement to Medicare
- Chapter 11 Bankruptcy

The event must result in the QB losing coverage for it to be deemed a Qualifying Event. For instance, an employee who goes from full time to part time status, but remains covered under the plan as a part time employee, does not incur a Qualifying Event (reduction in hours) as he/she has not lost coverage.

### **Required COBRA Notices**

There are two types of NOTICES that must be provided -- the initial notice and the notice upon the occurrence of a qualifying event.

- **The General Notice**
- **The Qualifying Event Notice**

### **General Notice**

The General Notice, often overlooked, must be given to an employee (and spouse) when first covered under the group plan. The initial notice must be in written form. **Cobra Compliance, Inc. will distribute this material to it's clients participants only if the optional service is elected**

COBRA provides that the "Group Health Plan" is responsible for providing the initial notice of COBRA rights. However, the statute does not elaborate on who is responsible for a failure to provide this notice. Addressing this issue, the courts have decided the duty of initial notification falls on "the parties to a plan" which included the employer, insurer and trustee.

### **The Qualifying Event Notice**

COBRA provides that the plan administrator must give written notice of COBRA rights a second time - at the time a qualifying event occurs. The notice upon occurrence of a qualifying event must be given within 14 days of the qualifying event.

The Department of Labor takes the position that the plan administrator (employer) is responsible for providing the second notice, and liable for failure to do so, even in the event the Plan Administrator delegates the responsibility to another person or entity.

There are other items that must be provided to a Qualified Beneficiary or COBRA participant. These items are as follows:

- **HIPAA Certificate of Creditable Coverage** - effective June 1, 1997 at time coverage is lost. This is provided by CCI in the Qualifying Event notice and in the termination letter.
- **Conversion Notice** - must be given within last 180 days of COBRA coverage. This is provided by CCI at 90 days prior to the end of a participants COBRA period.
- **Termination Notice** – must be provided upon termination of COBRA.
- **Open Enrollment Materials** - must be given at open enrollment periods if active employees have opportunities to change carriers, coverage's etc.

## **WHO MUST NOTIFY WHOM OF WHAT**

### **Employer's Notice to Plan Administrator**

A qualifying event triggers several obligations. If an employer uses the services of a third party administrator or TPA (i.e. Cobra Compliance, Inc.), the employer has 30 days to notify the TPA of a qualifying event. The TPA in turn has 14 days to notify beneficiaries of their rights under COBRA. While COBRA does not state that the notice given to the TPA be written, it is highly recommended (burden of proof on employer).

Employers that do not use a TPA must provide written notice to a Qualified Beneficiary within 14 days of the qualifying event.

### **Employee/Qualified Beneficiary Notice to Employer**

While much of the COBRA burden falls on the employer, COBRA does allocate some responsibilities to a covered employee or Qualified Beneficiary. Employees & Qualified Beneficiaries must notify the Plan Administrator, within 60 days, of the following events:

- A Divorce
- A Legal Separation
- A Dependent Ceasing to be a Dependent
- A change of address

COBRA does not require the above notice be written. A Federal District Court held that the QB satisfied their obligation by giving oral notice to the Plan Administrator.

## **THE ELECTION PERIOD**

### **Timely COBRA Elections**

A group plan can require that Qualified Beneficiaries make a timely election of COBRA coverage. An election is considered timely if it is made within the election period (60 days). The election period must not end before 60 days from the later of: the date coverage is lost due to the Qualifying Event, or; the date that the Qualified Beneficiary is sent notice of the right to elect COBRA coverage.

The 60 day election period is the statutory minimum period allowed. Thus, plans may offer a longer election period. However, before extending the election period beyond the statutory minimum, an employer should seek approval from their insurance carrier(s) to extend the period.

In the event an employer fails to notify CCI of a qualifying event within the stipulated time frames, it is still better to send a "late" Qualifying Event Notice rather than no notice at all.

### **Right to Wait**

COBRA's intent is to provide individuals with the right to coverage when they incur circumstances that cause them to lose coverage otherwise. Accordingly, Qualifying Beneficiaries are afforded a 60 day election period (their Right to Wait). While an employer is prohibited from enforcing a shorter election period than provided by the statutes, the employer is permitted to hold or pend claims incurred by the Qualifying Beneficiary during the election period. Claims pended during the election period must ultimately be paid provided the Qualifying Beneficiary elects COBRA coverage in a timely manner and also make the initial premium payment in a timely manner.

## **EMPLOYER OBLIGATIONS**

### **Billing and Eligibility Set-up with insurance carriers**

In order to better facilitate the process of COBRA administration, a good line of communication between the administrator and the insurance company is essential. We ask the employer to aid CCI to this end by providing us with the names and telephone numbers of all billing and enrollment specialists at their respective insurance carriers. This information is to be provided on the Employer Application.

### **Severance Agreements**

Severance agreements entered into between the employer and the QB should be handled the same as with any other COBRA situation with the exception of payments. In the event of a severance agreement, the CNF should be filled out exactly the same as with any other situation. Please note that the Qualifying Event date will still be the actual date that the QE occurred (i.e. date of termination). It is also recommended that the employer terminate the participant off their active bill just as they would with any other qualifying event. CCI will notify the participant in the same manner so that an enrollment form will still have to be filled out by the QB in order for COBRA to start.

However, if an employer specifies through a severance agreement that COBRA premiums will be paid by the company, the actual dates and duration of the agreement must be communicated to Cobra Compliance, Inc. in writing. A copy of the actual severance agreement would suffice. Once the participant elects COBRA, CCI will bill the employer directly for the months agreed upon in the severance agreement and be responsible for submitting the enrollment form to the insurance company to reinstate the participant back onto the group health plan.

### **Mid-year Premium Increases**

Once a Qualifying Beneficiary elects COBRA coverage, he or she can be required to pay premium increase under certain circumstances. In the event a new determination period starts, and the applicable premium increases, the new rate can be charged to the Qualifying Beneficiary. **It is the responsibility of the employer to communicate any rate changes to Cobra Compliance, Inc.** This will allow CCI to generate new coupons for all affected COBRA participants. These rates should be communicated at least 30 days prior to the change.

### **Plan Changes**

If an employer decides to change insurance carriers at any time, this must be communicated immediately to Cobra Compliance, Inc. It is also the responsibility of the employer to send open enrollment information to all eligible COBRA participants in the event of a plan change or the introduction of a new plan sponsor.

## **COBRA ENROLLMENT PROCEDURES**

After a qualifying event occurs, a completed Cobra Notification Form (CNF) should be completed and sent directly to CCI. Instructions for completing the COBRA Notification Form are listed on the reverse side of each CNF. CCI also makes available on-line entry of COBRA events via our website. Please contact CCI to obtain your code and password should you want to use this option.

Please be sure to include all information asked for on the CNF. Each line of information has a particular importance with relation to compliance to both COBRA and HIPAA regulations. If there are minor omissions or errors on a notification form sent to CCI, our processor will call to obtain the correct

information. However, CCI does reserve the right to send back notifications not completed in their entirety. This will obviously delay the process of notification to the qualified beneficiary.

### **Participants Enrollment onto COBRA**

Once a notification is sent to the qualified beneficiary they may elect to continue COBRA. If they elect, an enrollment form will be sent back to Cobra Compliance. If a full payment is remitted along with the enrollment form, CCI will forward those enrollment forms to the employer. The employer must “re-enroll” the electing participant in the benefit plan(s) elected by forwarding the election form (or a change form if required by your insurance provider) to the insurance company.

Due to the fact that enrollment forms are not sent immediately, there can be interruptions in coverage. Also, if a participant sends only their enrollment form and no payment, interruptions may occur. If an account is not paid to current status but the participant is within their grace period, they can pay for services or prescriptions and then submit a claim form to the insurance carrier for reimbursement.

### **Timing of Payments to Employers**

Cobra Compliance will accept premiums received in our office up to the last business day of each month. Premiums collected and the Premium Reconciliation Reports are sent to the employer on the 7<sup>th</sup> of each month (for premiums collected the previous month).

We recommend that the employer pay all COBRA participant premiums to the insurance providers and take a retroactive credit if the participant does not make payment. For example, if the employer is paying July premium on or about July 1<sup>st</sup> the COBRA premiums for the month of July will not be received from Cobra Compliance until early August. Thus, to avoid service interruptions and eligibility problems, it is suggested the employer pay the July premiums and take a credit for any participants who did not pay for July on the August bill.

It should be noted that our coupons correspondence to the participants asks that payments be received by the 1<sup>st</sup> of the month to avoid service interruptions. However, due to the 30 day mandatory grace period extended by the Internal Revenue Service, many participants send payments late in the month that they are due. Due to this fact, CCI cannot guarantee that services will not be interrupted due to tardy payments.

These stipulations and a condensed version of the information listed in this manual are provided to all qualified beneficiaries in the “Qualifying Event Notice.”

## **PARTICIPANT OBLIGATIONS**

Once an eligible participant has ended their employment or has incurred one of the qualifying events, we ask that all inquiries relating to COBRA be referred directly to Cobra Compliance, Inc.

If a qualified beneficiary decides to enroll under COBRA, they will be responsible for forwarding all correspondence and payments directly to CCI. This would also include any changes of address and/or additions of newborn children.

**Note: It is the responsibility of the COBRA participant to notify both the insurance carrier and CCI directly of their addition of any newborn child.**

## COBRA PREMIUM PAYMENTS

### Calculating the COBRA premium

COBRA does not require employers to pay for continuation coverage. Employers are permitted to charge employees 100% of the cost of the group health plan plus an additional 2 % (for a total premium of 102%). CCI does charge the additional 2% fee and retains it for administrative costs.

In the event that a COBRA participant qualifies for a disability extension (additional 11 months), the IRS allows for the insurance carrier to charge a maximum of 150% of the premium during the 11 months of the extension. CCI will default to charging the 150% unless otherwise directed by the employers' insurance contract.

### Grace Period for Late Premium Payments

There are two grace periods for COBRA premium payments. The first relates to the initial premium payment which must be made within 45 days of the date of COBRA election. The second grace period applies to monthly payment of premiums. The employer or plan administrator must give a 30 day grace period from the monthly due date. There is no specific guidance as to how to apply the grace period. Thus, it is suggested employers follow other COBRA guidance as to when items are considered to "sent" or "made" and use the postmark date for determining whether a premium payment has been made in a timely fashion. **Cobra Compliance, Inc. will automatically terminate any participant whose payment is postmarked after 30 days of the due date.**

### Effect of Nonpayment of Premium

A COBRA continuee who fails to make payment by the last day of the grace period will cause COBRA coverage to be terminated retroactively to the first day of the period for which premiums were due. For example, if a COBRA payment due on June 1st is not received (postmarked) by June 30th (end of the 30 day grace period), then COBRA coverage may be terminated retroactively to June 1st.

It is recommended that employers and plan administrators clearly indicate that a failure to pay premiums in a timely manner will result in a loss of coverage retroactive to the date through which premiums were last paid.

### Who May Make Premium Payments?

There are no statutory or regulatory guidelines under COBRA that indicate who may or may not pay COBRA premiums. Accordingly, employers and plan administrators should be prepared to accept premium payments from a third party. Plan documents and COBRA notices should contain specific language as to the information that should accompany a premium payment if the payment is being made by a third party. For instance, the name and social security number of the COBRA continuee should be on the check stub of a third party payer.

## **OPEN ENROLLMENT**

### **COBRA Regulations**

If an Open Enrollment is offered to active employees, the same must be offered to each QB receiving COBRA continuation coverage. OE is the period of time in which a participant may:

- Switch from one group health plan to another.
- Switch to another benefit package within the same plan.
- Add or eliminate coverage of family members.

### **Employer Action**

Benefit plan changes and new rates should be submitted to CCI upon receipt of this information from the carriers. CCI should also be informed of the new eligibility representative, as well as the deadline for submitting OE election forms to the carrier.

CCI offers a choice of two services: *standard or optional*. The standard service is included in the Administrative Services Agreement. If the employer chooses the optional service, CCI will assist with full OE distribution for an additional cost.

### **Service Types:**

#### **Standard Service**

- CCI will provide mailing labels for active COBRA participants to employer.
- Employer sends out all OE materials to COBRA participants.
- Employer advises CCI and the carrier of OE elections.
- CCI sends rate change notice with new payment coupons to participants.

#### **Optional Service\***

- CCI will mail OE packets to each COBRA participant.
  - New plan rates
  - Election forms
  - Benefit summary (if provided to CCI by the employer)
- CCI will collect election forms from participants and notify carriers of changes.
- CCI sends rate change notice with new payment coupons to participants.

*\* Additional charges apply for this optional service. Please contact your CCI Account Manager for details.*