

VEHI GENERAL COBRA INFORMATION SUMMARY

January 2018

IMPORTANT

As you know, COBRA continues to be an important part of overall benefit administration. For purposes of continuation coverage, all **VEHI group members (regardless of size)** follow the federal law COBRA requirements.

COBRA broadly applies to all medical care. **In addition to your VEHI health plans, COBRA applies to HRAs, dental plans, stand-alone vision plans,** and FSAs under limited circumstances.

This is a summary of the basic requirements under COBRA, provides answers to some common questions, and includes a list of resources available on the VEHI website.

This memo is not intended to provide legal advice. Nor is it intended to fully-address every specific COBRA-related issue. COBRA matters are often complex and require an analysis of specific facts and circumstances. Employers should consult with legal counsel if there are questions about compliance and administration issues.

When should an Initial (General) COBRA Notice be sent?

All covered employees and covered spouses must receive an Initial (General) COBRA Notice within the first 90 days after the date group health plan coverage begins [or is effective]. One Notice addressed to both the employee and spouse (if married at the time of initial enrollment) satisfies the requirement. Otherwise, a separate Initial Notice must be sent to the spouse if subsequently enrolled. It is essential to ensure that an Initial COBRA Notice is sent because it informs the employee and spouse, if applicable, of their obligations to the Plan Sponsor.

The US DOL Model General Notice should be used. **The model notice will need to be customized prior to use.**

What plans are subject to COBRA?

All VEHI health plans are subject to COBRA. Other coverage subject to COBRA includes:

- Dental Plans;
- Stand-Alone Vision Plans;
- Health Flexible Spending Arrangements (limited eligibility, contact Human Resources); and
- Health Reimbursement Arrangements

Who is entitled to COBRA?

Individuals entitled to COBRA are called “qualified beneficiaries”. To be a qualified beneficiary the individual must be enrolled in the employer’s group health plan on the day before a qualifying event takes place. The following individuals can be qualified beneficiaries:

- A Covered Employee
- A Covered Spouse of a Covered Employee, including a Same-Sex Spouse
- A Covered Dependent Child of a Covered Employee
- A Newborn or Adopted Child
- A Child of a Same-Sex Spouse
- An alternative recipient under a QMCSO (Qualified Medical Child Support Order)

When is COBRA Required?

COBRA must be offered when there is a loss of coverage caused by one of the following qualifying events:

- Termination of employment
- Reduction in hours of employment
- Death of a covered employee
- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Medicare entitlement for covered employee
- Employer bankruptcy

A COBRA Election Notice must be sent within 14 days after receiving Notice of the event. The US DOL Model Election Notice should be used. **The model notice will need to be customized prior to use.**

How long does COBRA coverage last?

Employers must make COBRA coverage available to qualified beneficiaries when there is a loss of coverage caused by a qualifying event. The coverage must be extended for up to 18 months if the qualifying event is a termination of employment or a reduction in work hours. For other events, the coverage must be extended for up to 36 months. The chart below details the maximum duration of COBRA based on the qualifying event:

Qualifying Event	Maximum Benefit Period
a. Termination of employment	18 months
b. Reduction in hours of employment	18 months
c. Death of a covered employee	36 months
d. Divorce or legal separation	36 months
e. Dependent child ceasing to be a dependent	36 months
f. Medicare entitlement for covered employee	36 months

The duration of COBRA covered is generally measured from the date of the qualifying event.

What Coverage Must be Offered?

Once there is a loss of coverage due to a qualifying event, an employer needs to determine what coverage must be offered to the qualified beneficiaries. The qualified beneficiary must be offered the opportunity to continue the coverage that they were receiving immediately before the qualifying event.

What rights do qualified beneficiaries have?

Qualified beneficiaries have the same rights under the health plan as active employees. For example, during open enrollment periods they must be allowed to add or drop family members, change coverage, and change carriers, if available. If a qualified beneficiary adds a family member during open enrollment who was not previously covered, that added family member does not become a qualified beneficiary.

Can a qualified beneficiary revoke their initial waiver of their right to COBRA coverage?

Yes, however there is no requirement that qualified beneficiaries complete either an election or a waiver of COBRA coverage. If a qualified beneficiary does not want to elect COBRA, they simply do not return the election form or notify the plan administrator of the election within the 60-day time period.

Do qualified beneficiaries have to be notified of open enrollment periods?

Do qualified beneficiaries need to be notified of any changes in the plan?

Yes. Notify the qualified beneficiaries the same as you would notify your active employees with respect to plan changes and premium increases.

Are we able to charge additional premium when a qualified beneficiary adds a benefit or dependent at open enrollment?

Yes. The qualified beneficiary should be charged the additional premium. In some cases, the addition of a dependent will not change the premium. For example, many plans will request payment for the first two children only.

Are we able to withhold an employee's final paycheck until he or she elects or declines COBRA coverage?

No. Employers are not able to withhold money or other benefits to which an employee is entitled until COBRA.

When can we terminate health coverage?

If the employee does not elect COBRA prior to the end of employment, coverage should be terminated effective the last day of the month following termination. If the employee subsequently elects COBRA (which is allowed), they can be retroactively re-enrolled.

Can a qualified beneficiary's COBRA coverage be terminated if payment was made with an NSF check?

Yes. Before COBRA coverage is terminated, the plan administrator must allow the qualified beneficiary the opportunity to make the payment prior to the expiration of the grace period (minimum 30 days). If payment is not received, the coverage may be terminated. We recommend that the qualified beneficiary be notified of the termination with documentation kept on file.

Although employers are technically within their rights to terminate a qualified beneficiary's COBRA coverage when the grace period expires, under certain circumstances it may be prudent to allow a little extra time to receive the proper payment. A Notice of Early Termination is used for this purpose.

Are there circumstances when COBRA may be unavailable?

In limited circumstances, an individual may not be entitled to COBRA. This could occur, for example, if someone fraudulently enrolled an individual under the plan. If the person should not have been enrolled in the first place, COBRA would not be available.

Do any special rules apply to health FSAs with respect to COBRA?

Yes. Generally, only Health FSA plans that meet certain conditions are required to offer COBRA to those qualified beneficiaries who have a balance in their FSA account on the qualifying event date. For those participants who elect COBRA for their Health FSA under these limitations, COBRA can be cut-off at the end of the plan year in which the qualifying event occurred. The rules surrounding this exception are detailed and should be addressed with the help of your COBRA Administrator.

Are there any special rules that apply to Health Reimbursement Arrangements (HRAs) with respect to COBRA?

Yes. First, the employee or qualified beneficiary can only elect to COBRA the HRA plan IF the participant also elects to continue coverage under a VEHI plan. Additionally, HRAs will not fall under the FSA exception listed above and coverage under the HRA must be made available under the entire COBRA period. Like FSAs, the rules surrounding administration of the HRA under COBRA are detailed and should be addressed with the help of your COBRA Administrator.

How is the COBRA premium for an HRA determined?

COBRA rules allow employers to charge a COBRA premium for continuing HRA plan coverage. There are multiple methods employers can use to calculate the HRA plan premium annually. Employers should set this rate as soon as possible prior to the start of the next plan year to update their annual COBRA notice paperwork with the HRA premium rate information.

The employer should contact their third-party administrator (TPA) to review the information available to use in setting the premium amount and consider consulting legal counsel to determine which method to use in determining how the premium rate will be set annually. The employer should document which method was selected, the data used to support the premium calculation and the final premium rate for that plan year in the event that it is challenged by a qualified beneficiary or otherwise reviewed by IRS or other governmental agencies.

Please note that regardless of the method, the premium charged must be related to the actual COBRA coverage elected, not the level of coverage previously provided. For example, a qualified beneficiary who is losing coverage because of a divorce who was on a two-person plan would pay the premium for single coverage, not two-person coverage.

Again, employers are strongly encouraged to work with their TPA and others to determine which method will be used to calculate the COBRA method to be used for the HRA.

Resources:

The following materials are available on the VEHI website:

- US DOL COBRA Employer FAQ's
- US DOL COBRA Employee FAQ's
- US DOL Employer's Guide to Group Health Continuation Coverage under COBRA
- COBRA Continuation Coverage Model Election Notice
- COBRA Model General Notice
- COBRA Sample Notice of Early Termination (General and Failure to Pay Premiums)
- COBRA Sample Notice of Unavailability (Ineligible)
- June 2017 COBRA PowerPoint Presentation (VSHRP)

In addition, you should also be consulting:

- US Department of Labor: <https://www.dol.gov/general/topic/health-plans/cobra>
- HealthCare.gov: <https://www.healthcare.gov/unemployed/cobra-coverage/>
- HR 360 Website: (Multiline Members) <https://www.hr360.com/Employee-Benefits/COBRA/Introduction-to-COBRA-Continuation-Coverage.aspx>