

# COBRA

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# DISCLAIMERS/CAVEATS

This presentation does not constitute legal advice. The laws and legal requirements concerning these matters are complex and specific issues should be addressed and analyzed on a case-by-case basis in direct consultation with school district legal counsel.

# DISCLAIMERS/CAVEATS

This is not a comprehensive training on COBRA. The focus is on implementation of COBRA in a school setting. There are other rules that may apply in other employer settings. Those are not covered here.

# WHAT IS COBRA?

- Consolidated Omnibus Budget Reconciliation Act
  - Requires group health plans to offer continuation coverage to covered employees, former employees, spouses, former spouses and dependent children
  - Applies to plans sponsored by state and local governments
  - If continuation of coverage is elected, same rights and plans as similarly situated individuals not receiving continuation of coverage – includes open enrollment, birth of a child, etc.
  - Loss of coverage may trigger special enrollment rights.

# WHAT IS A HEALTH PLAN UNDER COBRA?

- Definition of Health Plan:
  - 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. This includes a Health Reimbursement Arrangement (HRA).
- Medical care includes:
  - Inpatient and outpatient hospital care
  - Physician care
  - Surgery and other major medical benefits
  - Prescription drugs
  - Dental and vision care
- Does not include:
  - Life insurance
  - Disability Insurance

# QUALIFIED BENEFICIARIES

Qualified Beneficiary is:

- An individual who was covered by a group health plan on the day before a qualifying event occurred

AND

- Who is an employee, the employee's spouse or former spouse, or the employee's dependent child.

# QUALIFYING EVENTS

A Qualifying Event is the event that causes an individual to lose group health coverage

## Qualifying Events for Employees:

- Termination of employment for any reason other than gross misconduct OR
- Reduction in the covered employee's hours of employment

# QUALIFYING EVENTS

## A Qualifying Events for Spouse or Dependent Child:

- Termination of covered employee's employment for any reason other than gross misconduct
- Reduction in the covered employee's hours of employment
- Covered employee becomes entitled to Medicare
- Divorce or legal separation of the spouse from the covered employee
- Death of the covered employee
- Loss of dependent child status under plan rules (Age 26)

# NOTICES AND PROCEDURES

- BDD (Benefit Description Document)/COC (Certificate of Coverage) and Notices must include information about:
  - Name of plan
  - Address/telephone contact information for Plan Administrator
  - Notification requirements (who, what, how, when)
  - Importance of providing current addresses for all qualified beneficiaries
  - Other information specific to the type of notice (outlined later in presentation)

You are the Plan! Unless you use a TPA for COBRA, then you are both the Plan!

# COBRA NOTICE REQUIREMENTS

- Benefit Description Document (BDD/COC)
- Other Notices:
  - COBRA General Notice
  - COBRA Qualifying Event Notice
  - CORBA Election Notice
  - COBRA Notice of Early Termination of Continuation Coverage
  - COBRA Notice of Unavailability of Continuation of Coverage (Ineligibility)

# COBRA GENERAL NOTICE

- COBRA General Notice
  - Has to be provided within first 90 days of coverage to the **employee and spouse** covered under the plan
  - Can be included with the BDD/COC
  - Use of the Model General Notice is considered good faith compliance with general notice content requirements
  - General Notice of COBRA Rights must contain:
    - 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
    - A statement that the general notice does not fully describe COBRA or the plan and more information is available from the plan administrator and the BDD/COC
    - And notice contents outlined on prior slide

# COBRA QUALIFYING EVENT/ELECTION NOTICE

- COBRA Qualifying Event Notice
  - The employer must notify the plan if the qualifying event is:
    - Termination or reduction in hours of employment of covered employee
    - Death of the covered employee
    - Covered employee's becoming entitled to Medicare
    - Must notify the plan within 30 days after the event occurs
  - This triggers the Election Notice Requirements

# COBRA QUALIFYING EVENT/ELECTION NOTICE

- COBRA Qualifying Event Notice
  - The covered employee or qualified beneficiaries must notify the plan if the qualifying event is:
    - Divorce
    - Legal Separation
    - Child's loss of dependent status under the plan
  - This triggers the Election Notice Requirements

# COBRA ELECTION NOTICE

- CORBA Election Notice
  - After receiving notice of qualifying event, the plan must provide an election notice, which describes rights to continuation of coverage and how to make an election
  - Must be provided within 14 days of notice of the qualifying event
  - Use of the model notice will be considered good faith compliance with the election notice content requirements of COBRA, if completely properly

# COBRA ELECTION NOTICE

- CORBA Election Notice

Notice must include:

- Notice contents listed previously
- Identification of qualifying event
- Identification of the qualified beneficiaries by name or status
- An explanation of the qualified beneficiaries rights to elect continuation coverage
- The date coverage will terminate/terminated if not continuation coverage is not elected
- How to elect continuation coverage
- What will happen if continuation coverage is not elected or is waived
- What continuation coverage is available, for how long and how it can be extended for disability or second qualifying events
- How continuation might terminate early
- Premium payment requirements, including due dates and grace periods
- Statement that the election notice does not fully describe COBRA or the plan and more information is available from plan administrator and the BDD/COC

# ELECTION PROCEDURES

- At a minimum must give at least 60 days to elect continuation coverage
  - 60 days from the later of:
    - Date the qualifying event occurs
    - Date on which the qualified beneficiary loses/would lose coverage as a result of the qualifying event
    - Date on which the qualified beneficiary is informed of notice responsibilities and procedures (General Notice/BDD/COC)
  - If one person gives notice, the notice covers all qualified beneficiaries affected by the event
- Each qualified beneficiary has an independent right to elect continuation coverage
- Even if waived, can change mind until end of election period; Coverage can begin on date waiver was revoked

# DURATION OF COVERAGE

Qualifying Event	Qualified Beneficiaries	Maximum Period of Continuation Coverage
Termination or reduction in hours	Employee, Spouse, Dependent Child	18 months
Employee enrollment in Medicare	Spouse, Dependent Child	36 months
Divorce or legal separation	Spouse, Dependent Child	36 months
Death of employee	Spouse, Dependent Child	36 months
Loss of "dependent child" status under the plan	Dependent child	36 months

# EXTENSION OF 18 MONTHS PERIOD OF CONTINUATION COVERAGE

- Disability
  - If one qualified beneficiary in a family is disabled and meets certain requirements, all qualified beneficiaries in that family are entitled to an 11 month extension of the maximum period
  - Total of 29 months (18 months + 11 months)
  - Requirements
    - SSA determines disability before 60<sup>th</sup> day of continuation coverage AND
    - Disability continues during the rest of the 18 months period of continuation coverage

# EXTENSION OF 18 MONTHS PERIOD OF CONTINUATION COVERAGE

- Second Qualifying Event
  - 18 month extension may be available if qualified beneficiary/beneficiaries experiences a second qualifying event
  - Total 36 months (18 months + 18 months)
  - Second qualifying events:
    - Death of covered employee
    - Divorce or legal separation of the covered employee and spouse
    - Medicare entitlement
    - Loss of dependent child status under the plan

# EXTENSION OF 18 MONTHS PERIOD OF CONTINUATION COVERAGE

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

Example:

- John Smith loses his job and is entitled to COBRA with his wife Jane Smith for 18 months on the beginning of January. Four months into COBRA, John and Jane Smith have a divorce finalized on April 1st. John Smith's account will continue for another 14 months. Jane Smith will be removed from John Smith's account and placed on her own account effective April 1st. Her COBRA will expire in 32 months.

# PAYING FOR CONTINUATION COVERAGE

- Maximum amount charged cannot exceed 102% of cost of plan (100% of premiums plus 2% admin fee)
- 11 month disability allows for different calculation
- Can increase cost if premiums are increased (12 months)
- Most allow monthly payment; can allow weekly or quarterly
- Election Notice must outline cost of premiums, payment due date(s), and consequences for payment and nonpayment
- Must allow up to 45 days after election to make premium payments; if not paid after 45 days can terminate coverage
- Minimum of a 30 day grace period to make payments
- Have to allow 30 days to correct insignificantly incorrect payments (\$50 or 10%)
- Coverage begins the date after coverage was lost due to qualifying event (premiums due from that point forward)

# EARLY TERMINATION

- Can terminate before end of maximum period of coverage for following reasons:
  - **Premiums not paid in full on a timely basis**
  - Employer ceases to maintain any group health plan
  - Qualified beneficiary begins coverage under another group health plan after electing continuation coverage
  - Qualified beneficiary becomes entitled to Medicare benefits after electing continuation coverage
  - Qualified beneficiary engages in conduct that would justify the plan terminating coverage of a similarly situated participant or beneficiary not receiving continuation of coverage (such as fraud)
- Have to provide notice of Early Termination

# SAMPLE COBRA NOTICE OF EARLY TERMINATION (PREMIUM PAYMENTS ONLY)

- Re: COBRA Premium Payment
- Date: [today's date]
- Dear [COBRA beneficiary name],
- According to our records, you elected COBRA continuation coverage beginning [date]. As stated on the election form you submitted (copy enclosed), you are required to make periodic payments in full for each COBRA coverage period. Although these periodic payments are due on the first day of the month for that month's coverage, you have a grace period of 30 days after the day of the coverage period to make the payment. Your continuation coverage is provided for each coverage period as long as payment is made before the end of the grace period. If you fail to make a periodic payment before the end of the grace period for that coverage period, you will lose all rights to continuation coverage under the plan.
- As of this date, we have not received your COBRA premium payment for the month of [month]. As the grace period of 30 days has expired, please accept this letter as notice that your COBRA continuation coverage is terminated as of [last coverage date for last month for which payment was received].
- If you have questions, please call me at [telephone number].
- Sincerely yours,
- [Name, Title]
- Enclosures

# SAMPLE COBRA NOTICE OF EARLY TERMINATION (SELECT REASON)

- *[NOTE: This notice must be customized according to your school's plan particulars and the employees specific situation. The notice must explain the reason coverage has terminated, provide the date of termination and describe any rights the qualified beneficiary may have to elect alternative group or individual coverage, such as a conversion right (29 C.F.R. 2590.606-4(d)). The time for providing this notice is as soon as reasonably practicable following the plan administrators determination that continuation coverage will terminate (69 Fed. Reg. 30090). See NOTE TO EMPLOYER at the end of this notice for additional information.]*
- [Date of Notice]
- [Employee, Spouse and Covered Dependents Last known mailing address]
- This notice pertains to your COBRA continuation coverage under [Name of the plan(s) under which COBRA coverage will terminate]. It is important that all covered individuals read this notice. Please advise [Name of COBRA administrator] immediately if there is a covered dependent not living at the above address.
- Coverage under the plan(s) named above ceased or will cease on [last day of coverage] for the following individuals:
- [insert name(s) of qualified beneficiary(ies) who are losing coverage]
- COBRA continuation coverage terminated or will terminate for the following reason:

# SAMPLE COBRA NOTICE OF EARLY TERMINATION (SELECT REASON CONTINUED)

- \_\_\_\_ A required premium was not paid in full on time.
- \_\_\_\_ A qualified beneficiary became covered, after electing continuation coverage, under another group health plan that does not impose any preexisting condition exclusion for a preexisting condition of the qualified beneficiary.
- \_\_\_\_ A covered employee became entitled to Medicare benefits (under Part A, Part B or both) after electing continuation coverage.
- \_\_\_\_ The employer ceased to provide any group health plan for its employees.
- \_\_\_\_ For cause (i.e., fraud): \_\_\_\_\_
- [Describe any rights the qualified beneficiary may have to elect alternative group or individual coverage, such as a conversion right.]
- If you believe that your COBRA coverage should not have been terminated, you can request us to reconsider our determination by filing an appeal as follows:
  - 1. Send a written appeal to [Name and Address] within 30 days of your receipt of this notice.
  - 2. Explain why you believe your COBRA continuation coverage was improperly terminated and include all information you wish to be reviewed. Be sure to include your name, current address and the names of any covered dependents you wish to include in your appeal.
- If you have any questions regarding the information in this notice, you should contact:
  - [Name of COBRA administrator, Telephone Number and Address].
- Sincerely,

# NOTICE OF INELIGIBILITY

- COBRA Notice of Unavailability of Continuation of Coverage
  - Ineligible or Denial of Coverage

# SAMPLE NOTICE OF UNAVAILABILITY OF CONTINUATION COVERAGE

- *NOTE: This notice must be customized according to your school's plan particulars and the employees specific situation. The notice must explain why an individual is not entitled to continuation of coverage (29 C.F.R. 2590.606-4(c)). The plan administrator must provide the notice within 14 days after receiving a notice of qualifying event from a participant, beneficiary or other individual (29 C.F.R. 2590.606-4(b)(2)).*
- [Date of Notice]
- [Employee, Spouse and Covered Dependents Last known mailing address]
- Dear [Name],
- It is important that all covered individuals read this notice. Please advise [Name of COBRA administrator] immediately if there is a covered dependent not living at the above address.
- Effective on [date coverage ceases] you are no longer covered by the employer-sponsored [Coverage/Plan Name] plan. **This means claims for service on or after this date will not be paid.**
- Your loss of coverage is a result of [event] on [event date]. Under COBRA, some events and subsequent loss of coverage entitle you to continue your coverage under this plan. However, given the circumstances you described and any documentation you may have provided, [Company Name] has determined that COBRA is unavailable to you and your covered dependents because:
- [insert description of reason for unavailability of COBRA coverage]
- If you have questions or wish to appeal this decision, please contact [COBRA administrators name and contact information] for assistance.
- Sincerely,
- [Name]

# SUMMARY OF TIMELINES

Notice or other Requirement	Timeline
BDD/COC	At hire, open enrollment or upon request
General Notice	1 <sup>st</sup> 90 days of coverage
Qualifying Event	ER: 30 days to tell TPA EE: As defined by the Plan
Election Notice	TPA: 14 days from notice ER: 44 days total (notice of event & sending election notice)
Election of Coverage	60 days to elect; 45 days for 1 <sup>st</sup> payment; 30 days grace period
2 <sup>nd</sup> Qualifying Event	As soon as practicable
Early Termination Notice	As soon as practicable
Ineligibility Notice	14 days

# SUMMARY OF STEPS

Step	When
Issue BDD/COC	At hire, open enrollment or upon request
Issue General Notice	1 <sup>st</sup> 90 days of coverage To Employee AND qualified beneficiaries (spouse/dependents)
Notice of Qualifying Event	Prepare and Issue Election Notice
Terminate or Change Enrollment due to Qualifying Event	You can always add back on after COBRA election is known Do NOT anticipate what they may or may not do!
Process the Election Form	Re-enroll; (For an ex-spouse enroll in single; employer does not pay a portion of the premiums. Employee ex-spouse cannot pay premiums through pre tax deduction)
Track Payments	45 days from election; 30 day grace period
Notify of Open Enrollment	Same opportunity as active employees
Terminate from plan	End of COBRA Period or Early Termination

# SUGGESTED NOTICE METHODS & MAINTAIN GOOD FAITH STATUS

- Mail to Employee and Family
  - Use 1<sup>st</sup> class mail and keep a log of letters sent OR
  - Obtain a Certificate of Mailing
  - Do not use return receipts – proof not received
- The qualify for good faith use of DOL forms, you must include and personalize the notice for your district's use
- Always remember to personalize samples to match your school's procedures

# RECORD KEEPING REQUIREMENTS

- COBRA regulations do not specify a mandatory record-keeping period for COBRA-related notices and correspondence with employees.
- Recommendation is to keep medical records at least six years
- Records would include:
  - Written notice to employee and their dependents of their option to continue group health plan coverage following qualifying events
  - With issues around continuing coverage you will want to be able to document notice was sent
  - What about records of payments?

# RESOURCES

- VEHI Resources:
  - <http://vehi.org/benefits/navigating-2018-health-plans/employer-navigation/cobra/>
- Notifying New Employees About the Exchange
  - <http://vehi.org/benefits/navigating-2018-health-plans/employer-navigation/additional-resources/>