

# Targeted Compliance COBRA



## Complying with COBRA Notice Obligations

Under COBRA, notices must be sent when a group health plan first becomes subject to COBRA, when new employees become covered, when employees add spouses, when qualifying events occur, when COBRA coverage is not available, and when there is an early termination of COBRA coverage. Additionally, these notice obligations are subject to specific timing requirements. To help you develop a compliance process to meet your COBRA notice obligations, consider the targeted action items below.

### Procedures

- **Disclose COBRA notice procedures in Summary Plan Description (SPD).** Under the Department of Labor's (DOL's) COBRA regulations, a plan must establish reasonable procedures for covered employees and qualified beneficiaries to use in providing notices to the plan. Under those regulations, a plan must include these procedures in its SPD(s). A plan that does not establish and disclose reasonable procedures will be bound by informal notices, including oral notices, and notices directed to parties other than those who normally handle COBRA notices.

### Notices from the Employer

- **Timely distribute COBRA General Notices.** The initial COBRA notice explains to covered employees, spouses and dependents: COBRA law, their notification obligations, and their rights to future COBRA coverage. This notice was previously called the Initial COBRA Notice. The DOL now refers to this notice as the General Notice. The General Notice must be distributed by a plan administrator to covered employees and their spouses when plan coverage initially begins. A Model General Notice is provided by the DOL in a Word format on the DOL website at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>. The General Notice must be provided to covered employees and spouses when a group health plan first becomes subject to COBRA; when new employees become covered; and when employees add spouses to a plan. The General Notice should be furnished within 90 days after commencement of coverage, or if later, 90 days from the date when the plan first becomes subject to COBRA. The General Notice should be furnished to each covered employee and spouse by first class mail to the covered employee's last known address. If all covered family members are at the same address, then a single notice mailed to that address and addressed (inside and out) to the employee and spouse is sufficient to notify the employee, spouse, and any dependents. However, some plans engage COBRA third party administrators to distribute COBRA General Notices in addition to other COBRA services, so plan sponsors should verify that their third-party administrators are properly addressing and sending General Notices.
- **Meet employer deadlines for certain qualifying event notices to the plan administrator.** An employer generally must meet a 30-day deadline to provide notice to its plan administrator of the following events: a covered employee's termination of employment, a covered employee's reduction in hours of service, the death of a covered employee, a covered employee becoming entitled to Medicare, and the employer's bankruptcy. The obligation to provide notice only arises if the event also causes a loss of coverage.

### Notices from the Plan Administrator

- **Provide COBRA Election Notices on a timely basis.** A critical notice is the Election Notice, which provides qualified beneficiaries information regarding their rights and obligations after a specific qualifying event has occurred. The plan administrator must furnish an election notice to each qualified beneficiary (including the covered employee, covered spouse, and any covered dependent child) who loses plan coverage in connection

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with a qualifying event. When a qualifying event occurs, the plan administrator has 14 days from the date it receives notification to notify qualified beneficiaries of their COBRA rights. If the qualifying event is one where the employer has the obligation to notify the plan administrator of the event (such as termination of employment) and the employer is also the plan administrator and issues COBRA notices directly, the employer has the entire 44-day period in which to issue a COBRA election notice. The election notice should be furnished to each covered employee, spouse, and dependent by first class mail to the covered employee's last known address. If all covered family members are at the same address, then a single notice mailed to that address and addressed (inside and out) to the employee and spouse is sufficient to notify the employee, spouse, and any dependents. A plan administrator should be able to prove that the notice was actually sent to the qualified beneficiaries; however, the plan administrator does not need to prove receipt of the notice. A plan administrator should follow a standard notification and mailing procedure to demonstrate that the procedure is designed to send the notice to the correct address. Each qualified beneficiary has an election period of 60 days to elect COBRA continuation coverage. Under the law, the 60-day election period starts from the date the notice is "provided" or the date coverage is lost, whichever is later.

- **Distribute Notice of Unavailability of COBRA continuation coverage when appropriate.** Under the DOL's COBRA regulations, if a plan administrator receives a notice of qualifying event, a notice of second qualifying event, or a notice of disability and determines that the individual described in the notice is not entitled to COBRA coverage (or to an extension of the maximum COBRA coverage period), then the administrator must provide the individual with a Notice of Unavailability of COBRA coverage. A Notice of Unavailability provides the individual with an explanation of why COBRA coverage is not available. No model form is provided by the DOL in the Final Regulations, but the notice must be written in a manner calculated to be understood by the average plan participant. Moreover, the notice must be furnished in a manner reasonably calculated to ensure receipt of the material and can be done by first class mail to the covered employee's last known address.
- **Furnish Notice of Early Termination when needed.** Under the DOL's COBRA regulations, when COBRA coverage terminates before the end of the maximum coverage period, the plan administrator must provide a written Notice of Early Termination to each impacted qualified beneficiary. The Notice of Early Termination must be furnished by the plan administrator as soon as practicable following the decision to terminate the COBRA coverage early due to late or nonpayment of premiums, termination of the group health plan, becoming covered under another group health plan or Medicare, being deemed not disabled (if covered under the disability extension) or for cause. When furnished, the notice may be combined with the HIPAA Certificate of Creditable Coverage.
- **Notify impacted individuals of any conversion rights on a timely basis.** If a plan includes an option for conversion to individual coverage after group coverage ends, the plan administrator must notify all qualified beneficiaries that their COBRA coverage is coming to an end and they have the right to elect an individual conversion policy. This notice must be sent first class mail to their last known address within 180 days prior to the expiration of their COBRA coverage period. Employers may wish to send information about Marketplace coverage to qualified beneficiaries whose COBRA coverage is ending.

## Information Provide to Health Care Providers

- **Disclose coverage status to health care providers.** Under the IRS COBRA regulations, a plan must disclose to inquiring health care providers (e.g., physicians, hospitals, or pharmacies) information related to a qualified

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beneficiary's right to coverage under the plan during the COBRA election period, the 45-day initial COBRA premium payment period, and the 30-day grace periods for COBRA premium payments.

## Notices from Qualified Beneficiaries to the Plan

- **Establish an appropriate contact to receive notices from qualified beneficiaries.** In the case of a divorce, disability, legal separation, or cessation of dependency, covered employees and qualified beneficiaries are responsible for notifying the plan administrator that they have had a qualifying event. Covered qualified beneficiaries are also responsible for providing notice of second qualifying events like the death, divorce or legal separation, Medicare entitlement, and when a dependent child ceases to be a dependent under the plan. If the notice is not given, then COBRA coverage does not have to be offered. It is important for plan administrators to establish an appropriate contact to receive such notices. The contact should be clearly identified in the plan's reasonable notice procedures (to be included in an SPD for a plan subject to ERISA). Moreover, plans that use third party vendors to administer COBRA should ensure that the same contact information is provided in plan materials and vendor notices to ensure that qualified beneficiaries do not receive conflicting information about who to contact.

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The intent of this analysis is to provide you with general information. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues should be addressed by your organization's general counsel or an attorney who specializes in this practice area.