



# CobraAid Toolkit 2010

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**Employer COBRA Procedures**  
**Company Name** \_\_\_\_\_

<b>Name:</b>	<b>Phone</b>
<b>Address:</b>	<b>Office Hours</b>

**Initial Notice of COBRA Rights**

The Plan Administrator has sent an Initial Notice of COBRA Rights to all employees (and spouses and dependents, where applicable) currently covered under the company's group health plan as of:

- Initial/General Notice has been sent 1<sup>st</sup> class mail with proof of mailing to the covered employee (and spouse and dependents, where applicable) to the last known address.
- Other method (included in new hire packet, etc.)

**Newly Covered Employees:**

The plan administrator provides an Initial/General Notice of COBRA rights to newly covered employees (and spouses and dependents where applicable) to the last known address via:

- **First class mail with proof of mailing.**
- **Other method (included in new hire packet, etc.)**

**Qualifying Event Notice:**

The Plan Administrator will send a Qualifying Event Notice to a Qualified Beneficiary who has a Qualifying Event as listed below.

**Qualifying Events:**

1. Termination of employment (for reasons other than gross misconduct)
2. Reduction of hours worked by the covered employee.
3. Death of the covered employee.
4. Divorce or legal separation.
5. Dependent child no longer meets the plan's eligibility requirements.
6. Dependent loses coverage due to the employee becoming entitled to Medicare.
7. Company files for Bankruptcy under Chapter 11 of the U.S Bankruptcy Code.

Qualifying Events notices will be sent via:  
 First class mail with proof of mailing to the last known address of the Qualified Beneficiary (and spouse and dependents where applicable).

Other Method \_\_\_\_\_

**Additional Forms included in this manual:**

1. Qualifying Event Notice (Qe01/Qe02)
2. Election Notice (Fel01)
3. Initial Notice of COBRA Rights (Int01)
4. Payment Coupon (Pc04)
5. COBRA Calendar (C01)
6. Documentation Record (Dor01)
7. Payment Record (Pr01)
8. Additional Information Needed (Pmt01)
9. Qualifying Event Cover Letter (Wl03)
10. Certificate of Group Health Coverage (HP06)
11. Open Enrollment Letter (0e08)
12. Termination of Coverage (Cx108)\*
13. Election Confirmation Letter (Ecl010)
14. Notice of COBRA Unavailability (CO-UV)\*
15. Notice of Termination-Conversion Option (Cx05)

*\* Required by 2004 COBRA regulations.*

*The CobraAid COBRA Administration Manual was developed with the intent of assisting the employer and Plan Administrator in managing the day- to-day tasks of COBRA administration. CobraAid is not engaged in the rendering of legal advice. If legal advice is needed, the employer should contact competent legal counsel.*

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## Employer COBRA Procedures

### Background

Congress passed The Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1986. One of the provisions of COBRA is to provide certain individuals with the right to temporarily continue their health coverage at group rates. The law generally applies to employers who sponsor a group health plan and have 20 or more full or part time employees during 50 percent or more of the business days in the preceding calendar year. A “group health plan” is defined as a plan that provides medical benefits for the employer’s own employees and dependents through insurance, HMO, or self funded arrangement. Medical benefits may include:

1. Hospital Care
2. Physician Care
3. Prescription Drugs
4. Other types of medical care, such as dental and vision.

Life insurance is not covered under COBRA.

### 2004 COBRA Regulations

On May 26, 2004, the Department of Labor issued final rules addressing certain notice requirements under COBRA. Group health plans must establish new procedures, update COBRA notices and Summary Plan Descriptions (SPD's), and provide new notices required by the final regulations.

The final rules become effective on the first day of the first plan year beginning on or after November 26, 2004. The new regulations will not apply until January 1, 2005 for group health plans using a calendar year for the plan year.

## Qualified Beneficiaries

Continuation coverage must only be offered to Qualified Beneficiaries. That is, individuals who were covered by the group health plan by virtue of his or her performance of services for the employer maintaining the group health plan on the day before a Qualifying Event.

A Qualified Beneficiary may be a former employee, spouse, former spouse, dependent children, retiree, or a child born to or placed for adoption with a covered employee.

Employees who are non-resident aliens are not considered Qualified Beneficiaries.

Domestic partners (of unmarried employees) are not entitled to COBRA rights.

And although retirees may be considered Qualified Beneficiaries, they are not included in the employee count when determining whether the employer meets the 20-employee threshold that will make the employer subject to COBRA unless they were active employees during the year being measured to determine COBRA status for the current year. Non-resident aliens, however, are counted when applying the 20-employee test.

### Qualifying Events

Qualifying Events are events that would cause a covered employee to lose group health coverage.

#### QUALIFYING EVENTS FOR EMPLOYEES INCLUDE:

1. Termination of employment for reasons other than "gross misconduct".
2. Reduction of hours worked by the employee.

#### QUALIFYING EVENTS FOR SPOUSES AND DEPENDENTS INCLUDE:

1. Death of the employee.
2. Covered employee becomes entitled to Medicare.
3. Divorce or legal separation.

4. Loss of dependent child status under the terms of the plan.
5. Retiree or retiree's spouse or child loses coverage within one year before or after the commencement of proceedings under Chapter 11 of the U.S. Bankruptcy Code.

### **Length of Coverage**

The length of COBRA continuation coverage that must be offered depends on the type of Qualifying Event. When a Qualifying Event causes a loss of coverage, the employer must allow COBRA continuation coverage under the group health plan for up to 18 months for Qualifying Events that are the termination of employment or reduction of hours. This period may be extended to 29 months if the Qualified Beneficiary is or becomes disabled at any time during the first 60 days of continuation coverage. A second Qualifying Event for a dependent occurring during the 18-month continuation coverage period of the first Qualifying event extends the original period to 36 months.

### **Non-Compliance**

The Department of Labor estimates that approximately 90 percent of all employers that are subject to Federal COBRA law are out of compliance. Non-compliance leaves the employer exposed to fines, excise taxes, and lawsuits.

#### **IRS**

The IRS may impose an excise tax of up to \$100 per day, per individual (\$200 per day per family). In general, the non-compliance period begins on the date the COBRA violation first occurs and ends on the earlier of:

- A. The date the failure is corrected, or
- B. The date that is 6 months after the last day the employer was required to provide continuation coverage.

The excise tax generally will not be imposed if it is determined by the Secretary of the Treasury that no potentially liable person would have known that a failure existed. This is referred to as the "Inadvertent Failure Rule". The excise tax may also not apply if the failure is corrected within 30 days. (sec. 4980b).

For violations which are not corrected before the date a notice of examination is sent to the employer, and which occurred during the period under examination, the tax may be the lesser of \$2,500 per affected beneficiary, or the excise tax that would apply based on the

length of the violation.

Higher minimum tax may apply where violations are more than “de minimis” (more than trivial), and may be applied in the amount of \$15,000, instead of \$2,500.

### **ERISA**

In addition to excise taxes imposed by the IRS, ERISA penalties may apply. The administrator may be personally liable to the participant or beneficiary for up to \$110 per day, measured from the date of the failure, until the violation is corrected.

## **Compliance Tips**

While the intent of Congress was to ensure that certain individuals have the opportunity to continue their health coverage at group rates, COBRA has placed a certain administrative burden on the employer. Managing COBRA continues to be a challenge to most employers. Documentation, training, and definable procedures are the keys to proper COBRA administration. As an employer, you should, at a minimum:

1. Appoint an individual within the company (possibly a Human Resources professional), to be your company’s COBRA Plan Administrator.
2. Have a COBRA Procedures Manual. This is an outline of the methods by which your company manages the day-to-day responsibilities of COBRA.
3. Have a resource your Plan Administrator can access for questions or problems that may arise.

The purpose of the CobraAid COBRA Administration Manual is to assist the Plan Administrator in managing the complexities of COBRA. The manual contains forms, notices, instructions and a COBRA Procedures Manual. While the information contained within this manual is believed to be accurate, it is not intended to be a substitute for legal counsel.

## **Plans that must comply**

Any company that maintains, or sponsors, a group health plan, and employs 20 or more full or part time employees during 50 percent or more of the business days in the preceding calendar year are subject to COBRA. Governmental plans (within the meaning of Internal Revenue Code section 414(d)), and Church plans (within the meaning

of IRC section 414(e)) are excepted from COBRA. All full-time and part-time common law employees, regardless of whether or not they are covered under the Plan, are taken into account when determining whether the company must comply with COBRA.

According to COBRA Regulations, part time employees may be counted as a fraction of a full time employee, with the fraction equal to the number of hours the part time employee works divided by the number of hours an employee must work in order to be considered full time, not to exceed 40 hours per week. Self-employed individuals, independent contractors, and directors are not considered common law employees, and these individuals are not taken into account for COBRA purposes.

According to IRC 414, all employees of the Plan Sponsor and all related employees under common control are to be counted when considering whether the employer must comply with COBRA. The Plan Administrator should be certain to determine if there is any relationship, either direct or indirect, with another corporation. Once a company determines that it must comply with COBRA, it must do so for the entire calendar year. In other words, if the employer determined that they had 20 or more employees for 50 percent of the business days during the last calendar year, they will then have to comply for current year, even if during the current year they fall below the 20-employee mark.

For example, The Bread Company employed 20 or more employees for all of 2002. Due to decreased demand for its products, the workforce was reduced to 10 employees for all of the year 2003. The Bread Company was still subject to COBRA for the entire year 2003. For the year 2004, they would no longer have to offer COBRA continuation coverage. However, it is important to note that even though an employer who is no longer subject to COBRA may not have to offer continuation coverage going forward, those Qualified Beneficiaries who elected continuation coverage while the employer was subject to COBRA must be allowed to continue coverage until the maximum coverage period expires.

### **Notice Requirements**

Internal Revenue Code Sec. 4980B requires the group health plan to provide, upon commencement of coverage under the plan, a written notice of COBRA rights to each covered employee and spouse (if any). The Code also requires a Qualifying Event Notice be provided when a Qualified Beneficiary experiences a Qualifying Event.

It is important to note that while ERISA requires a description of COBRA rights in the Summary Plan Description (SPD), and the Department of Labor requires that the SPD contain information that clearly identifies which circumstances may result in a forfeiture or suspension of any benefits under the plan, it is suggested that the employer send a separate Initial Notice of COBRA rights. The use of the SPD to provide the Initial Notice is not prohibited under COBRA law. However, the method of delivery of the SPD to the covered employee may be insufficient. If called upon, the plan must be able to produce proof that both the Initial Notice and Qualifying Event notices were “provided” in good faith, which according to the Department of Labor, means sending via First-Class mail to the last known address.

If, as a matter of course, the employer uses hand delivery, or sends the SPD regular mail addressed to the employee only (and not the spouse, if any), this may in fact be insufficient in that there may be no proof that the notice was actually provided. Remember, the plan does not have to prove that the notice was actually received, only that it was “provided”.

### **Initial (General) Notice of COBRA rights.**

The single most overlooked part of COBRA is the requirement that employers provide an Initial Notice of COBRA rights to newly covered employees, spouses, and/or dependents when they first become covered under the company’s group health plan. COBRA law specifically stipulates that *two* notices are to be provided.

IRC Section 4980 (B)(f)(6)(A) states “*the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.*” The 2004 Final Regulations require the plan administrator to provide a general notice of COBRA rights to each covered employee and spouse **within 90 days of the of the date coverage begins**. If a qualifying event occurs during the 90-day period before the general notice has been provided, the general notice requirement is satisfied if the COBRA election notice is provided in a timely manner. Providing a general notice with the election notice is not required in this case.

#### **Notice Content Requirement**

The notice must contain the following information

- I. Name of plan.
- II. Information about who may become qualified beneficiaries.
- III. Types of qualifying events that may entitle the individual to continuation coverage.
- IV. Employer's obligation to inform the plan administrator of qualifying events.

- V. The maximum COBRA continuation coverage period and explanation of events that may extend the coverage period.
- VI. Premium requirements.
- VII. Any requirement the qualified beneficiary has to notify the plan administrator of certain qualifying events, such as divorce, legal separation, child's loss of dependent status under the terms of the plan, or a disability determination by the Social Security Administration.

Generally, the notice should explain the need for all qualified beneficiaries to keep the plan administrator informed of their current address. The notice should also state that the notice is general in nature and more information is available in the Summary Plan Description and from the plan administrator.

And while The Department of Labor has issued a Model Notice that may be used to satisfy COBRA's Initial Notice requirement, it is recommended that legal counsel review all COBRA notices, forms, etc. The language contained within a company's COBRA notices should include the necessary language that applies to their plan.

#### **Timing of Initial or General Notice**

The general notice of COBRA rights must be provided to the covered employee and spouse within 90 days of the commencement of coverage under the plan. Prior to the 2004 Final Regulations, plans were required to provide a general notice "at the time of commencement of coverage under the plan". This was ambiguous and subject to interpretation. The 90-day period clarifies the time requirement.

#### **Use of Summary Plan Description as General Notice**

Since the Summary Plan Description (SPD) is required to be provided to the covered individual within 90 days, and must contain a description of the COBRA rights and obligations of both the plan and qualified beneficiaries, it is acceptable to include the general notice in the SPD and still satisfy the COBRA general notice requirements. The issue arises as to the method of delivery. If the SPD is given to the employee at work, this does not satisfy COBRA's notice requirements. A separate general notice must still be mailed to the employee and covered spouse.

Many employers focus much of their COBRA efforts on the so-called "back end" of COBRA. That is, employers often satisfy COBRA requirements by providing a Qualifying Event Notice to Qualified Beneficiaries. However, the single biggest reason employers are out of compliance is the failure to provide the Initial Notice.

As an employer, you will know when certain Qualifying Events occur, such as termination or reduction of employees' hours. However, for other events, such as divorce or legal separation, or a child who no longer meets the plan's eligibility requirements, you may not know unless the employee notifies the Plan Administrator. Obviously, the employee can only be expected to notify their employer of these events if they have been made aware of their obligations to do so. These obligations and responsibilities are outlined in the Initial Notice of COBRA rights. The Department of Labor has issued an advisory opinion stating *that a person who is not properly notified of their rights cannot be held liable for a failure to perform his or her obligations under COBRA*. For this reason, it is imperative that the Plan Administrator not only provide an Initial Notice to newly covered employees, but also follow a set procedure, and document how each notice was "provided".

#### **First Class Mail**

While COBRA does not specifically instruct the employer how to "provide" the Initial Notice, it is strongly recommended that the Plan Administrator send these notices to the employee and spouse via 1<sup>st</sup> Class Mail to the last known address. Using an alternative, such as regular mail, or placing the notice in the employee's "new hire" packet, may prove to be insufficient for a number of reasons.

A single notice addressed to the covered employee and spouse is sufficient if the employer's records show that the employee and spouse both reside at the same address. The notice should be addressed to both the employee and spouse. If the employee and spouse do not reside at the same address, a separate notice must be sent. As with other COBRA notices, first class mail with proof of mailing is sufficient.

Remember, the covered employees' spouse also must be provided with the notice, and simply handing it to the employee, or including it with other employment related paperwork does not provide the proof necessary to show good faith compliance. The Department of Labor has issued a technical release stating that the use of 1<sup>st</sup> Class Mail as a means of providing COBRA notices does in fact show "good faith" on the part of the employer. Again, the Department of Labor does not prohibit the use of other methods, including oral notification of COBRA rights, however, whether these other methods satisfies the good faith requirements will be considered on a case by case basis.

The Plan Administrator will not be required to provide proof that the

Notice was actually received by the employee, only that it was "provided". Case law has shown that a Qualified Beneficiary will be

treated as having received the Notice if the Plan Administrator provided the notice in “good faith”.

It is imperative that all Qualified Beneficiaries be provided with the Initial Notice so that they may familiarize themselves with their rights and responsibilities under COBRA.

**Initial Notices must also be provided to:**

1. Employees who previously declined coverage, but have chosen to enroll at the last open enrollment.
2. A new spouse (of a covered employee) who becomes covered under the Plan.

**Planning Tip for Initial Notice**

While the requirement that employers provide an Initial Notice of COBRA rights to each newly covered individual is often the most overlooked facet of COBRA administration, it is the most easily correctable. When it comes to proving compliance, the burden of proof is on the employer to show “good faith”. Numerous court cases have hinged not on whether the notice was sent, but whether the employer could show documentation that the notice was sent. If the Plan Administrator does not have documentation that all currently covered employees (and spouses and/or dependents, if applicable) have been provided an Initial Notice of COBRA Rights, then steps should be made to immediately address this.

**Qualified Beneficiary/Qualifying Events**

A Qualified Beneficiary generally is an individual covered by a group health plan on the day before a Qualifying Event.

Qualifying Events are certain events that may cause an individual to lose health coverage.

**ALL OF THE FOLLOWING ARE CONSIDERED QUALIFYING EVENTS:**

1. Termination of the employee’s employment for any reason other than gross misconduct.
2. Reduction of hours worked by employee, including strike, and leave of absence.
3. Death of the employee.
4. Divorce or legal separation.
5. Dependent child ceasing to meet the plan’s eligibility requirements.
6. Loss of coverage by the dependent because the covered employee becomes entitled to Medicare.

7. Loss of coverage by a retiree within one year before or after the commencement of proceedings under Chapter 11 of the U.S Bankruptcy Code.

A child born to, or placed for adoption with a covered employee during a period of COBRA continuation coverage is considered a Qualified Beneficiary. Also, in the case of a Qualifying Event that is the bankruptcy of the employer, a covered employee who had retired on or before the date of the loss of coverage is also considered a Qualified Beneficiary. Also, any spouse, surviving spouse, or dependent child covered on the day before the Qualifying Event is a qualified beneficiary under the plan.

A Qualifying Event can only occur when the plan is subject to COBRA. That is, a termination, reduction of hours, or other event that occurs during a plan year in which the employer is not subject to COBRA (i.e. qualified for the small employer exception) are not Qualifying Events and therefore continuation coverage does not need to be offered.

When determining whether or not a Qualifying Event has occurred, it should be understood that the Qualified Beneficiary does not have to suffer a complete loss of coverage. The Final Regulations make clear that to “lose coverage” means to cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event. A loss of coverage may include an increase in the employee contribution that results from a Qualifying Event.

Reductions or elimination of coverage in anticipation of an event are not considered in determining whether the event results in a loss of coverage. For example, if an employee removes a spouse from coverage in anticipation of a divorce, COBRA continuation coverage must be made available as of the date of the divorce (or legal separation), not before.

#### **Cal-Cobra and Federal COBRA (for CA employers only)**

Governor Gray Davis signed into law assembly bill 1401 that extends California's continuation health insurance coverage period to 36 months for ALL Qualified Beneficiaries. The information contained in this manual and the Qualifying Event forms pertain only to the law's effects on Federal COBRA. For information on Cal-COBRA, please consult your insurance carrier.

California employees who begin receiving Federal COBRA

continuation coverage on or after January 1, 2003, and, under Federal COBRA law, would have been eligible for less than 36 months of coverage, are now eligible for up to 36 months of coverage. Employers should send only Termination or Qualifying Event notices that provides information to the Qualified Beneficiary of their rights to extend coverage under this new law.

THIS MANUAL CONTAINS QUALIFYING EVENT FORMS THAT HAVE BEEN REVISED TO INCLUDE THE FOLLOWING AS REQUIRED BY CALIFORNIA INSURANCE CODE (SECTION 1366.24):

1. ....Notice to Terminating Employees in California: The Health Insurance Premium Payment Program (HIPP).
2. ....Notice for Persons Disabled by HIV/AIDS. The CARE/HIPP Program. These programs provide benefits to certain individuals with high cost medical conditions (HIV/AIDS).
3. ....Qualifying Event Notices that contain information about the availability of additional state continuation coverage.

For a complete text of Assembly Bill 1401, please e-mail your request to [service@cobraid.com](mailto:service@cobraid.com).

### Length of Continuation Coverage

The maximum coverage period, that is, the length of time a Qualified Beneficiary may remain covered under COBRA, will depend on the type of Qualifying Event that the individual experiences. The length of time will range from 18 to 36 months, beginning on the date of the Qualifying Event.

IT IS IMPORTANT TO NOTE, HOWEVER, THAT COBRA CONTINUATION COVERAGE MAY TERMINATE PRIOR TO THE END OF THE MAXIMUM COVERAGE PERIOD FOR ANY OF THE FOLLOWING REASONS:

1. **Non-payment of premiums.** Continuation coverage for a Qualified Beneficiary may be terminated if the premiums are not paid in a “timely” manner. A payment is considered “timely” if it is made on the due date, or within the 30-day grace period (45 days for the initial premium payment).
2. **Termination of all Group Health Plans.** Continuation coverage for a Qualified Beneficiary may be terminated if the employer ceases to sponsor any group health plan.

3. **Other Coverage.** Continuation coverage may be terminated if the Qualified Beneficiary first becomes covered under another group health plan, which does not contain any pre-existing exclusion limitation, after the Qualified Beneficiary elects COBRA continuation coverage.
4. **Entitlement to Medicare.** Continuation coverage may also be terminated if the Qualified Beneficiary first becomes entitled to Medicare after the Qualified Beneficiary elects COBRA continuation coverage.
5. **Loss of Social Security Disability Status.** Continuation coverage may be terminated if the Qualified Beneficiary is determined to be no longer disabled by the Social Security Administration. Coverage can, however, be terminated only during the 11-month disability extension period.
6. **Termination for Cause.** Continuation coverage may be terminated, for cause, if the Plan would otherwise terminate coverage on that basis for similarly situated covered employees.

**18 Months for Qualifying Events That Are:**

1. Termination of employment for reasons other than gross misconduct.
  2. Reduction in the number of hours of employment.
- For these Qualifying Events, the maximum continuation coverage period will be **18 months**, measured from the date of the Qualifying Event. This maximum coverage period may be extended to **29 months** if a Qualified Beneficiary who is, under Title 11 or XVI of the Social Security Act, determined to have been disabled at the time of a Qualifying Event, or, within the first **60 days** of COBRA continuation coverage for all Qualified Beneficiaries. COBRA continuation coverage may be expanded to **36 months** for a spouse or dependent of an employee who has experienced one of the above listed Qualifying Events if a second Qualifying Event occurs, (such as divorce, legal separation, death of the employee, Medicare entitlement, or loss of dependent child status) during the original 18 month COBRA continuation coverage period. Notification by the Qualified Beneficiary should be made to the Plan Administrator within 60 days of the second Qualifying Event, and within the original 18 month COBRA continuation coverage period.

**36 Months for Qualifying Events That Are:**

1. Death of the covered employee.
2. Divorce or legal separation.
3. Dependent child ceases to meet the plan's

eligibility requirements

4. When dependents would lose coverage due to covered employee becoming entitled to Medicare.

For these Qualifying Events, the maximum coverage period will be 36 months, measured from the date of the Qualifying Event, or, up to 36 months measured from the date of the covered employee's Medicare entitlement, if the covered employee becomes entitled to Medicare and, within 18 months thereafter, has a Qualifying Event that is either termination of employment, or reduction of hours.

On February 13, 2004, the Internal Revenue Service issued revenue Ruling 2004-22, which addresses the extension of COBRA coverage (to 36 months) for spouses and dependents who are covered under COBRA. Prior to this ruling, it was standard practice to offer family members an extension, to 36 months, when the ex-employee became entitled to Medicare. This extension was outlined in COBRA's "second qualifying event" rules.

#### **IRS Revenue Ruling—Medicare as a 2<sup>nd</sup> Qualifying Event**

The facts as addressed in the Revenue Ruling are as follows:

Employee and spouse are covered under a group health plan subject to COBRA. Employee terminates employment and both employee and spouse lost coverage under the plan as a result of the termination. Both are offered COBRA for up to 18 months. Spouse elects COBRA and during the 18-month coverage period, the former employee becomes entitled to Medicare. The plan is notified of the Medicare entitlement within 60 days.

#### **The Legal Question**

Is the Medicare entitlement of the covered employee a second qualifying event for the spouse if the Medicare entitlement would not have resulted in a loss of coverage for the qualified beneficiary under the group health plan that is providing the COBRA coverage?

#### **The Ruling**

The IRS concluded that the employee's spouse would not be entitled to an extension of the maximum coverage period (from 18 to 36 months).

The IRS opined that the spouse would only be entitled to the extension if the 2<sup>nd</sup> qualifying event results in a loss of coverage for the qualified beneficiary under the plan within the maximum coverage period. To determine whether the event is a "second qualifying event" that would extend coverage to 36 months, the IRS uses the following test:

1. Apply the terms of the plan to the qualified beneficiary as if the covered employee had not experienced the termination of employment, and:
2. Determine whether the occurrence of the 36-month event would result in a loss of coverage under the plan within 36 months after the covered employee's termination of employment.

### **Why Medicare Entitlement May Not Be A 2<sup>nd</sup> Qualifying Event**

Under the IRS' interpretation of the regulations, a qualifying event can only occur if there has been a resulting loss of coverage. Medicare entitlement cannot cause a loss of coverage, and so it is not a qualifying event. Medicare Secondary Payer provisions prohibit plans from treating current employees, their spouses, and dependents differently from other group plan participants solely because one of them has reached age 65, or is entitled to Medicare because one of them has reached age 65.

The IRS looked at the fact raised in Revenue Ruling 2004-22 as if the covered employee had not been terminated. In other words, the IRS ignores the initial qualifying event (termination of employment) that triggered COBRA in the first place. The fact that the employee became entitled to Medicare cannot result in a loss of coverage for any plan participant (due to Medicare Secondary Payer Rules). Therefore, the spouse is not entitled to an extension of the maximum coverage period to 36 months because the employee's entitlement to Medicare is not a qualifying event.

Employers should consult with legal counsel to determine the best course of action with respect to this ruling. Because the courts may reject the IRS' interpretation of this COBRA statute, the plan should consider whether or not to change their COBRA procedures. COBRA regulations do not prohibit offering 36 months of coverage, regardless of this ruling.

### **29 Months for Qualifying Events That Are:**

A Qualified Beneficiary who is determined under Title II or XVI of the Social Security Act, to have been disabled at the time of a Qualifying Event, or, within the first 60 days of COBRA continuation coverage for all Qualified Beneficiaries, may be eligible to continue coverage for a total of **29 months** (11 additional months). The Qualified Beneficiary must provide, to the Plan Administrator, a determination of disability from the Social Security Administration within **60 days** of the date of the determination, and prior to the end of the original 18-month COBRA continuation coverage period. The employer is permitted to charge up to **150%** of the applicable premium during the 11 month disability extension. The Qualified Beneficiary is also required to notify the Plan Administrator, in writing, if the Social Security Administration has determined that the Qualified Beneficiary is no longer disabled under Title II or XVI of the Social Security Act.

### **Bankruptcy of the Employer**

When a retiree, spouse or child of a retiree loses coverage within one year before or after the commencement of proceedings under Chapter 11 of the U.S. Bankruptcy Code The maximum period of COBRA continuation coverage is as follows:

1. Coverage will continue, until the date of death, for covered employees, who retired on or before the date of the loss of coverage. Lifetime coverage is also available to widows or widowers of retirees.
2. Continuation coverage will be made available for the spouse and dependent children of a retiree for 36 months from the date of death of the retiree.

### **Leave of Absence/FMLA**

A leave of absence (i.e. reduction of hours) by a covered employee that results in a loss of coverage is treated as a Qualifying Event. COBRA continuation coverage must be made available as of the date coverage is otherwise lost. Some employers may offer alternative coverage to employees taking a leave of absence. In this case, if the alternative coverage differs from the coverage the employee had on the date prior to the Qualifying Event, they should be allowed the opportunity to choose either the alternative coverage, or COBRA continuation coverage. The Family and Medical Leave Act (FMLA) of 1993 was created to allow eligible employees the right to take 12 weeks of leave for certain family and medical reasons during a 12 month period. Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked at least 1,250 hours over the previous 12 months, and work at a location where the employer within 75 miles employs at least 50 employees. The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period.

FMLA requires employers to continue the same health benefits for employees during their period of unpaid leave and pay the same portion of the employee's premium that was being paid prior to the FMLA leave. IRS Notice 94-103 states that leave taken under FMLA is not considered a Qualifying Event for COBRA purposes because there has been no loss of coverage. A Qualifying Event may occur, however, if the employee fails to return to work at the end of the FMLA leave. In this case, the Qualifying Event is considered to have occurred on the last day of FMLA leave, which is when it becomes known that an employee is not returning to work and no longer is

entitled to FMLA leave.

### **Other Coverage**

The employer may not deny to the Qualified Beneficiary the option of COBRA continuation coverage based on the fact that the Qualified Beneficiary has other health coverage prior to the date COBRA continuation coverage is elected.

### **Gross Misconduct**

The employer, however, is not required to offer COBRA continuation coverage to individuals who have been terminated from employment because of “gross misconduct” (IRC section 4908B (f)(3)(B)). Unfortunately, “gross misconduct” is not defined in COBRA law. In the absence of any clear guidance from the IRS or Department of Labor on what constitutes gross misconduct, the employer should consider denying continuation coverage only in cases where the employer has a clear, well-documented case of gross misconduct. There have been numerous court cases in which ex-employees have sued challenging their former employers' failure to offer continuation coverage. Because of the nature of the alleged behavior, what might be considered gross misconduct in one job or industry may not be considered as such in another, and as a result, there has been no clear standard to follow. It is recommended that before a Plan Administrator denies continuation coverage to a Qualified Beneficiary because of termination due to gross misconduct, they make certain that they are able to produce sufficient documentation to back the claim. Also, if the employee accused of gross misconduct is allowed to resign, this may be seen as intent on the employer part to waive the allegations, and therefore, continuation coverage must be offered.

### **Qualifying Event Notices**

Final COBRA rules and ERISA section 606(a)(2) require the employer to provide notice to the plan administrator when the following qualifying events occur:

- I. Termination of employment (for reasons other than gross misconduct).
- II. Reduction in hours of employment.
- III. Death of the covered employee.
- IV. Covered employee becomes entitled to Medicare.
- V. Employer files for bankruptcy under Chapter 11 of the U.S Code.

The purpose of the notice is to make the Qualified Beneficiary aware of the availability of continuation coverage, the maximum period for which coverage will be available, and the costs associated with such coverage.

The employer is required to notify the Plan Administrator of a Qualifying Event within 30 days of the Qualifying Event.

The Plan Administrator in turn has 14 days to provide a Qualifying Event Notice to the affected Qualified Beneficiary. In cases where the employer is also the Plan Administrator, the Department of Labor has confirmed in an Information Letter that the employer/plan administrator has 44 days to provide the Qualifying Event Notice to the Qualified Beneficiary.

In the case of divorce, legal separation, or a dependent child losing dependent status, it is the responsibility of the covered employee, spouse, or dependent child to notify the Plan Administrator within 60 days of the date of the Qualifying Event or the date that coverage would have otherwise been lost as a result of the event, whichever is later. This requirement further underscores the importance of the Initial Notice. The employer is responsible, through the Initial Notice, for making the covered individuals aware of their responsibilities should they experience a Qualifying Event.

#### **Notice Contents**

The **notice from the employer** must contain sufficient information to enable the plan administrator to notify the qualified beneficiary of their COBRA rights. The notice should contain:

- I. The qualifying event date.
- II. Type of qualifying event.
- III. Name of the covered employee.
- IV. Name of the plan.

The qualifying event notice/election **notice** must be provided **to the qualified beneficiary** and contain certain information that informs the individual of their rights under COBRA. This notice must contain information that is written in a manner that can be easily understood by the average plan participant. The notice should include the following:

- 1) The name of all qualified beneficiaries to which the qualifying event applies.
- 2) The date of the qualifying event.
- 3) Type of qualifying event (termination of employment, divorce, etc.)
- 4) The name of the plan.
- 5) Name, address and phone number of plan administrator.
- 6) Election rights expiration date.
- 7) Explanation of the rights to an independent election.
- 8) The consequence of not electing COBRA coverage.
- 9) Date COBRA coverage will begin, if elected.
- 10) Type of coverage available to the qualified beneficiary.

- 11) The maximum COBRA coverage continuation period and any events that may cause COBRA coverage to be terminated prior to the end of the maximum continuation coverage period.
- 12) How the maximum continuation period may be extended due to Social Security disability or another 2<sup>nd</sup> qualifying event.
- 13) Premium information, due dates, grace periods, address where payments may be made, and consequence of non-payment of premiums.
- 14) A statement informing the qualified beneficiary that the notice is general in nature and more information may be obtained from the plan administrator.
- 15) A statement explaining the importance of keeping the plan administrator informed of any changes, such as change of address, divorce, child no longer dependent, etc.

### **Delivery of Notice**

A single notice addressed to the covered employee and spouse is sufficient if the employer's record show that the employee and spouse both reside at the same address. The notice should be addressed to both the employee and spouse.

If the employee and spouse do not reside at the same address, a separate notice must be sent. As with other COBRA notices, first class mail with proof of mailing is sufficient.

### **Applicable Coverage**

A Qualified Beneficiary must be offered coverage which is identical to the coverage provided under the plan to similarly situated nonCOBRA beneficiaries. If coverage is modified for active employees, continuation coverage may also be modified. According to the 1999 Final Regulations, the requirement that the Qualified Beneficiary be allowed to choose core only coverage when both core coverage and non-core coverage are bundled together has been removed.

This effectively requires the Qualified Beneficiary to elect the same coverage they had on the day before the Qualifying Event. In cases where the employer offers both core and non core coverage under separate, unbundled plans, the Qualified Beneficiary will be allowed to choose from among any or all of the coverage the Qualified Beneficiary had on the day before the Qualifying Event. This rule again underscores the intent of COBRA to treat Qualified Beneficiaries the same as similarly situated covered employees.

### **Qualifying Event Notice by Employee**

The covered employee or qualified beneficiary must notify the plan administrator of the following events. The plan's procedures will be considered reasonable if :

- I. The procedures are described in the plan's SPD.
- II. Describe the means by which the notice may be given, and the individual this notice may be given to.
- III. Describe the information required of the qualified beneficiary.
- IV. If the plan requires use of a specific form, this form must be made available to the qualified beneficiary upon request.

The qualified beneficiary must notify the plan in case of the following.

- I. Divorce or legal separation.
- II. Child's loss of dependent status under the terms of the plan.
- III. Determination of disability by the Social Security Administration, or termination of disabled status by the Social Security Administration.
- IV. Any 2<sup>nd</sup> qualifying event that extends the maximum coverage period from 18 to 36 months, or, in the case of disability extension, from 29 to 36 months.

Employers must provide a reasonable written procedure for covered individuals and qualified beneficiaries to provide notice of certain qualifying events. The notice from the covered individual or qualified beneficiary should be considered sufficient if it contains the following:

- I. Name of the plan
- II. Name of qualified beneficiaries.
- III. The type of qualifying event.
- IV. The date of the qualifying event.

### **Timing of Notice**

The covered employee or qualified beneficiary must notify the plan administrator:

- I. Within 60 days of the date of the divorce or legal separation.
- II. Within 60 days of the date the child loses dependent status according to the terms of the plan.
- III. Within 60 days of the date of the determination, by the Social Security Administration, of the qualified beneficiary's disabled status.
- IV. Within 30 days of the termination of disability status, as determined by the Social Security Administration.

### **Insurability Requirements/Adverse Selection**

While it is true that Qualified Beneficiaries who elect to receive COBRA continuation coverage tend to be more likely to have health issues, and as a result, file more claims, the employer may not require

any evidence of insurability on the part of the Qualified Beneficiary in order to be eligible for continuation coverage.

### **Conversion Plans**

Many group health plans contain a provision that allows the covered individual to purchase an individual health insurance policy, without being required to show evidence of insurability, when the individual ceases to be covered under the group health plan. If a Qualified Beneficiary's COBRA continuation coverage ends as a result of the expiration of the maximum coverage period, the group health plan must, during the 180 day period that ends on that expiration date, provide the Qualified Beneficiary the option of enrolling under a conversion health plan if this option is available to similarly situated nonCOBRA beneficiaries under the group health plan.

### **Region Specific Plans**

The 1999 Final Regulations eliminate the requirement that plans, such as HMO's, are required to have employees in the area to which the Qualified Beneficiary is moving. If the employer sponsors a group health plan for similarly situated nonCOBRA beneficiaries that could be extended to the area in which the COBRA Qualified Beneficiary is moving, then the employer is required to make that coverage available to the Qualified Beneficiary.

If the employer does not sponsor any group health plans in the area to which the Qualified Beneficiary is moving (because the plans are all region specific), then the employer is not required to make coverage available to the relocating Qualified Beneficiary.

### **Geissal v. Moore Medical Corp. (Other Coverage)**

Perhaps the single biggest COBRA related court case. The Supreme Court rejected the idea that an individual who has other group health coverage or becomes entitled to Medicare prior to electing COBRA continuation coverage does not have to be offered continuation coverage. Plan Administrators should make certain that a Qualified Beneficiary who has other group health coverage or becomes entitled to Medicare prior to the date of the COBRA election be offered continuation coverage. The 1999 Final Regulations eliminate the rule in the 1987 proposed regulations that an individual is not a qualified beneficiary, if on the day before the qualifying event, the individual was entitled to Medicare benefits.

## **Notice Of Unavailability of Coverage**

### **Notice Requirement**

According to the 2004 Final Regulations, if a plan administrator receives notice of any first or second qualifying event from an individual or qualified beneficiary,

and the plan administrator determines that the individual is not entitled to COBRA, or an extension of COBRA, the plan administrator must provide the individual with an explanation of why the individual is not entitled to elect COBRA. The notice should be written so that it can be understood by the average plan participant.

#### **Timing of Notice**

ERISA's claims and appeals procedures require that a written response to any denial of COBRA coverage be provided within **14 days** after the plan administrator receives the notice of qualifying event from an individual.

#### **Delivery of Notice**

A single notice addressed to the covered employee and spouse is sufficient if the employer's records show that the employee and spouse both reside at the same address. The notice should be addressed to both the employee and spouse. If the employee and spouse do not reside at the same address, a separate notice must be sent. As with other COBRA notices, first class mail with proof of mailing is sufficient.

### **Notice of Early Termination of COBRA Coverage**

#### **Notice Requirement**

The 2004 Final Regulations require that the plan administrator notify each qualified beneficiary of any termination of COBRA coverage that will occur prior to the end of the maximum coverage period.

#### **Timing of Notice**

This notice must be provided "as soon as practicable following the plan administrator's determination that continuation coverage shall terminate". The notice must state:

- I. the reason that continuation coverage has terminated prior to the end of the maximum continuation period.
- II. the date coverage will terminate.
- III. any rights the qualified beneficiary has under the plan or other applicable law to elect alternative group or individual coverage, such as conversion rights.

#### **Delivery of Notice**

A single notice addressed to the covered employee and spouse is sufficient if the employer's records show that the employee and spouse both reside at the same address. The notice should be addressed to both the employee and spouse. If the employee and spouse do not reside at the same address, a separate notice

must be sent. As with other COBRA notices, first class mail with proof of mailing is sufficient.

## 2010 Notice Requirements-Chart

Type	Who Sends	Description	When to send	Model Notice Available?	Alternate Delivery?
General or Initial Notice	Plan Administrator to covered employee and spouse.	Minimum Requirements	Within 90 days of commencement of coverage.	Yes	SPD
Qualifying Event Notice-Employer	Employer to plan administrator	Info about plan, qualifying events, and dates of events.	30 days after qualifying event.	Yes	None
Election Notice	Plan Administrator to Qualified Beneficiary.	Minimum requirements as listed in Final Regulations.	14 days after notice of QE, or 44 days if employer is plan administrator.	Yes	None
Qualifying Event Notice-Employee	Covered employee to plan administrator.	Plan must provide a reasonable written procedure.	60 days after qualifying events.	No	Depends on plan procedure.
<b>Additional Notices</b>					
Notice of Cobra Unavailability	Plan Administrator to individuals who provided QE notice	Why individual is not entitled to COBRA.	Same as election notice timeframe.	NO	None
Early Termination Notice.	Plan administrator to qualified beneficiaries.	Reason for, date of termination, conversion rights, if any.	“As soon as practicable” after decision is made to terminate.	NO	None

## **Electing COBRA**

### **Election Period**

The Qualified Beneficiary has 60 days from the later of a) the date coverage would be lost as a result of the Qualifying Event, or b) the date the notice was provided to the Qualified Beneficiary. There have been, however, a number of court cases in which the date the Qualifying Event Notice was actually *received* marked the beginning of the 60-day election period. Before rejecting an election form that may be received a few days after the 60-day election period ends, the Plan Administrator should determine whether the Qualified Beneficiary actually made the election within 60 days of the receipt of the Qualifying Event Notice. The maximum COBRA continuation period is generally measured from the date of the Qualifying Event , not the date of election. As a result, a Qualified Beneficiary who waits until the last day of the election period before choosing to elect will have his/her coverage reinstated retroactively back to the original benefits termination date.

### **Initial Premium Payment**

Along with the 60-day election period, the Qualified Beneficiary then has 45 days from the date of the election to make the initial premium payment. This effectively means that the Qualified Beneficiary may have as much as 105 days (60-day election period plus 45 days to make the initial payment) in order to decide whether or not they actually want COBRA continuation coverage.

Also, it is important that the Plan Administrator understand that according to COBRA law, the premium payment is considered made on the date sent (the postmark date). Upon receipt of the Initial Premium Payment, the Plan Administrator should verify that the payment is the proper amount. A record should be made reflecting the date the payment was made, and the insurance carrier should be contacted to reinstate coverage.

### **Non-election/Waiver of Coverage**

If a Qualified Beneficiary fails to elect continuation coverage within 60 days and make the Initial Premium Payment within 45 days, they forfeit all rights to COBRA continuation coverage. However, a Qualified Beneficiary may waive coverage during the election period (i.e. make a verbal or written statement to the Plan Administrator), and then later revoke this waiver, as long as they are still within the election period. If the Qualified Beneficiary waives coverage and then revokes this waiver (within the 60 days election period), this will be

considered a timely election.

## **Cobra Premiums**

### **Applicable Premium**

For COBRA purposes, the applicable premium is defined as the cost to the plan for the period of coverage for similarly situated nonCOBRA beneficiaries.

The Qualified Beneficiary may be charged up to 102 percent of the applicable premium for COBRA continuation coverage. 150 percent of the applicable premium may be charged during the 11-month Social Security Disability extension, but only if the disabled Qualified Beneficiary is included in the COBRA coverage. Also, the Plan may not charge, for any period of continuation coverage, 150 percent of the applicable premium if the disabled Qualified Beneficiary experiences a second Qualifying Event during the original 18-month continuation period.

However, if the disabled Qualified Beneficiary experiences a second Qualifying Event during the 11 month disability extension, the plan may charge 150 percent of the applicable premium for the duration of the continuation coverage period. The 1999 Final Regulations make clear that 150 percent of the applicable premium may not be charged for any period for which the Qualified Beneficiary would have been entitled to receive coverage without regard to the disability extension.

When determining under what rate plan (i.e. individual, individual plus spouse, family, etc.) the Qualified Beneficiary will be billed, the Plan Administrator must take into account the number of Qualified Beneficiaries electing coverage. Generally, the rate plan used should be the same rate plan that would be used for those individuals for whom a qualifying event has not occurred. For example, if the spouse and child, employee, spouse and child, or employee and children elected continuation coverage, the family rate (plus 2 percent) would normally apply.

However, even though a “child only” category may not be specifically be an option under the plan, it is important to remember that each Qualified Beneficiary has an independent right to elect coverage. In this case, if the only Qualified Beneficiary to elect coverage was the child, the rate charged should be the individual rate (plus 2 percent). The IRS has reasoned that if only the child elects continuation coverage, they are more similarly situated to an individual than a family, and thus the individual rate

may apply.

#### **Determination Period**

The determination of any applicable premium must be made for a period of 12 months and must be determined prior to the beginning of the period. Generally, the determination period will be the plan year. However, the determination period may be any 12-month period (plan year, rating year, etc.) as long as the determination period is applied consistently from year to year.

#### **Applicable Premium for Self-Insured Plans**

COBRA law provides for a special rule for self-insured plans. First, the plan may determine the applicable premium on an actuarial basis, and take into account such factors as the Secretary of Treasury may prescribe in regulations. If this method is used, the plan should obtain an objective opinion from a qualified professional. Using the second method, the plan may determine the applicable premium on the basis of past cost. This method may not be used in cases where there has been a significant change in coverage between the determination periods, or a significant change in the number of employees covered by the group health plan between the determination periods.

#### **Billing of Qualified Beneficiaries for COBRA coverage**

COBRA law does not specifically require the billing or providing of payment vouchers or grace letters to COBRA Qualified Beneficiaries who elect continuation coverage. However, to assist the Qualified Beneficiary in maintaining continuation coverage, the Plan Administrator may choose to send an invoice to the Qualified Beneficiary each month.

If this method is used, the invoice should make clear the date payment is due, the last day on which the payment may be made, the total amount due, and the address to which the premium payment should be sent. COBRA law considers a payment to have been made on the date sent (i.e. the postmark date). Documentation of all payments, including copies of the envelope containing the postmark date, should be retained by the Plan Administrator.

#### **Short Premium Payments/NSF Checks**

The Final Regulations clarify that premium payments for continuation coverage that are short by an amount that is “insignificant” should not result in a loss of coverage. A payment shortfall is considered insignificant if it is not greater than \$50 or 10% of the required amount, whichever is less. The Plan Administrator may

either accept the payment as a payment in full, or notify the Qualified Beneficiary and allow an acceptable period of time (30 days) to make the full payment.

In cases where a check for continuation coverage is returned by the bank for Non-sufficient Funds (NSF), the Plan Administrator should take steps to notify the Qualified Beneficiary. If time allows, a letter should be sent to the Qualified Beneficiary requesting a replacement payment. If the NSF payment is received too close to the end of the grace period, the Plan Administrator should call the Qualified Beneficiary to make them aware that a replacement payment must be made prior to the expiration of the grace period.

### **Third Party Payment**

The Final Regulations also clarify the issue of payments for continuation coverage on behalf of Qualified Beneficiaries by a third party. The Plan Administrator must accept (and be prepared to accept) a payment from someone other than the Qualified Beneficiary. In some instances, an ex-spouse as part of a divorce decree may make payments.

Or, in some states where a Medicaid program may apply, the State may be the payer. In any case, the Final Regulations do not require that the third party be a legal representative of the Qualified Beneficiary. As such, timely, accurate payments should be accepted regardless of the source.

### **Election without a premium payment**

A Qualified Beneficiary has 45 days from the date of the election in order to make the initial premium payment. The Plan Administrator may not make the election of coverage contingent on the Qualified Beneficiary making the first premium payment at the time of election. If the Qualified Beneficiary fails to make the initial premium payment within the 45-day grace period, all COBRA continuation coverage will be terminated.

For a group health plan that provides health services such as an HMO or a walk-in clinic, a Qualified Beneficiary who has not yet elected or paid for coverage may be required to either elect and pay for continuation coverage, or pay a reasonable charge for services (but only if the Qualified Beneficiary will be reimbursed within 30 days of election and payment of continuation coverage).

Also, the plan may treat the Qualified Beneficiary's use of the

plan's health services as a constructive election of COBRA continuation coverage, and if it notifies the Qualified Beneficiary prior to the use of services, can require payment for COBRA continuation coverage.

For indemnity or reimbursement type health plans, the employer may continue the Qualified Beneficiary's coverage during the election period, or, cancel coverage until the Qualified Beneficiary elects coverage and then retroactively reinstate the coverage. Either way, the plan must make continuation coverage available during the entire election period if the Qualified Beneficiary makes a timely COBRA election. Any claims incurred by the Qualified Beneficiary during this election period do not have to be paid until a timely election and payment of initial premium is made.

#### **Future Payments/Non-Payment**

COBRA law mandates that the plan must accept monthly payments from Qualified Beneficiaries. Other options may be made available, such as weekly or quarterly, but the plan may not require the Qualified Beneficiary to pay on any other basis except monthly. Except for the initial premium payment (which the Qualified Beneficiary has 45 days to make), any subsequent monthly payments that are not made within the 30 day grace period will result in a cancellation of continuation coverage with no possibility of reinstatement. Coverage will be cancelled retroactively to the first day of the coverage period for which payment was not made.

#### **Provider Inquiries**

The 1999 Final Regulations adopted the position from the U.S. Court of Appeals in the case *Communication Workers of America v. NYNEX Corp*, that a group health plan must make a complete response to any inquiry from a health care provider regarding the a Qualified Beneficiary's right to COBRA continuation coverage during the election period. The plan must disclose the fact that although a Qualified Beneficiary has not yet elected COBRA continuation coverage and may not be on the plan, the Qualified Beneficiary may elect continuation coverage during the election period and will then have coverage reinstated retroactively.

Also, the plan must inform the provider if the Qualified Beneficiary has remained on the plan but has not yet made a timely election and thus is subject to a retroactive cancellation if timely election is not made.

## Flexible Spending Accounts

According to Internal Revenue Code Section 5000(b)(1), a health Flexible Spending Account does satisfy the definition of group health plan, and thus are generally subject to COBRA continuation coverage requirements. The 2001 Regulations contain a rule that may exempt the plan from offering COBRA continuation coverage if it meets three conditions:

1. The health FSA is not subject to the HIPAA portability provisions because the benefits provided under the health FSA are excepted benefits. For this to occur, the employer must provide other HIPAA covered benefits and the FSA benefit maximum does not exceed the greater of two times the employee's salary reduction, or, the employee's salary reduction plus 500 dollars.
2. The maximum that the health FSA could require to be paid equals or exceeds the maximum FSA benefit available for the year.
3. If, as of the date of the Qualifying Event, the maximum benefit available under the FSA is not more than the maximum amount that the plan could require as payment.

If the health FSA satisfies the first two conditions, the health FSA is not required to make COBRA continuation coverage available. If the third condition is met with respect to a specific Qualified Beneficiary, the health FSA does not need to make COBRA continuation coverage available to that Qualified Beneficiary.

## HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended ERISA to provide rights and protections for participant's in group health plans. Generally, HIPAA provides protection for individuals by limiting exclusions for pre-existing conditions, prohibiting discrimination against employees based on health status, and allowing special enrollment rights in certain circumstances.

HIPAA impacts COBRA in that the plan must provide a Certificate of Creditable Coverage to the individual when a) the individual ceases

to be covered under the group health plan, and b) when the individual ceases COBRA continuation coverage. Any individual who elects COBRA will then receive two Certificates of Creditable Coverage. One Certificate will be issued when the individual ceases to be covered under the plan, and another when COBRA continuation coverage ends.

A certificate must also be issued to any formerly covered individual upon request so long as that request is made within 24 months of the date coverage was lost. The individual may then present this certificate to their new group health carrier. The purpose is to reduce or eliminate the pre-existing condition exclusion period. If there has been no break in coverage of 63 days or more, the individual will receive a “credit” that will reduce the pre-existing condition period by one day for every day of coverage. This method is known as the “standard method”. HIPAA also permits an “alternative method” for crediting coverage.

Under the alternative method, the plan or issuer separately determines the amount of an individual’s creditable coverage for any of the five following categories of benefit: mental health, substance abuse treatment, prescription drugs, dental care and vision care. The plan must notify the individual if it is using the alternative method for any benefit plans.

While many insurance carriers are issuing HIPAA certificates, there are instances when the COBRA plan administrator may be required to provide the certificate. For example, not all carriers automatically issue a HIPAA certificate when the individual ceases COBRA continuation coverage. Also, since a waiting period cannot be used when determining the 63-day break in coverage, the insurance carrier may fail to issue a certificate to an individual who terminated employment prior to reaching the end of the waiting period. The carrier would not have issued a certificate because the individual was not covered under the plan; however, the ex-employee is entitled to a certificate if one is requested.

#### HIPAA ALSO GUARANTEES INSURABILITY FOR INDIVIDUALS WHO:

1. Have had coverage for at least 18 months where the most recent period of coverage was under a group health plan.
2. Have not had their group health coverage terminated because of fraud or non-payment of premiums.

3. Have exhausted their COBRA continuation coverage.
4. Are not eligible for coverage under another group health plan, Medicare, or Medicaid or have any other group health coverage.

A group health plan is required to allow special enrollment for certain individuals to enroll in the plan without having to wait until the plan's next open enrollment. This "special enrollment" applies if an individual with other health insurance loses that coverage.

A special enrollment also occurs if a person has, or becomes, a new dependent through marriage, birth, adoption or placement for adoption. The individual must notify the plan to request special enrollment within 30 days after losing coverage, or within 30 days of becoming, or having become, a new dependent.

Special enrollees may not be treated as late enrollees for purposes of any pre-existing condition exclusion period. Therefore, the maximum pre-existing condition exclusion period that may be applied is 12 months, reduced by the individual's creditable coverage (rather than the 18 months reduced by creditable coverage)

## Qualifying Event Form

### Qualifying Event Form

The Qualifying Event Form should be sent when the individual experiences a qualifying event.

Along with the QE form (QE01 or QE02 depending on which type of qualifying event), the cover letter (WL03), Election Form (Fel01) and Certificate of Creditable Coverage (Hp06) should be included.

**cobraaid** **Important Information**  
Regarding Your Rights to COBRA Continuation Coverage  
(Qualifying Event Notice for Termination or Reduction of Hours)

To: \_\_\_\_\_  
From: \_\_\_\_\_  
Title: \_\_\_\_\_

Under the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), former covered employees and their eligible dependents have the right to temporarily continue coverage under the sponsoring employer's group health plan for up to 18 months if coverage terminates due to a **Qualifying Event** that is:

- 1) Termination of employment including voluntary resignation, involuntary termination, retirement or layoff except for termination due to gross misconduct.
- 2) Reduction of hours worked, including total stoppage, strike, or loss of office.

A **Qualifying Event** means all of the above events that would cause an employee, former employee, or covered spouse, or covered dependent child to lose coverage under the sponsoring employer's group health plan.

An employee, former employee, spouse or dependent child who had coverage due to a Qualifying Event and was covered on the Plan the day before the Qualifying Event is known as a **Qualified Beneficiary**. A child born to or placed for adoption with the covered employee during a period of COBRA continuation coverage will also be considered a Qualified Beneficiary.

Qualified Beneficiaries may be entitled to continue the same group health coverage as if had on the day before the Qualifying Event. This may include medical, dental, vision, prescription drug benefits and certain Health Flexible Spending Accounts (HSA's), COBRA continuation coverage that was covered as Life Insurance, Accidental Death and Dismemberment or Disability Insurance. You are entitled to COBRA continuation coverage even if you have other health coverage, including entitlement to Medicare, so long as the coverage was in effect prior to electing COBRA continuation coverage.

**Electing COBRA Continuation Coverage**

Electing COBRA continuation coverage must be completed by you or your child in writing to the Plan Administrator (your employer or your eligible dependent child). In order for you to elect to continue coverage, you must be provided, or received by the Plan Administrator within 60 days from the date of the Qualifying Event, notice of the date of this action, whichever is later. Each Qualified Beneficiary is entitled to make an independent election of any health plan that which they are eligible. If you elect continuation coverage, you are entitled to receive the same level of benefits as similarly situated non-COBA's beneficiaries. Changes to plan benefits may be notified or occur due to Federal COBRA regulations. A separate Election Form must be completed by Qualified Beneficiaries who wish to make an independent election. Please contact the Plan Administrator for additional facts. Coverage may also be elected for children born to or placed for adoption with a covered employee during the period of the Qualified Beneficiary's continuation coverage as accordance with the Plan's enrollment rules. Contact the Plan Administrator if this applies to you.

**Duration of Continuation Coverage**

For Qualifying Events that are the termination of employment or reduction of hours, the period of COBRA continuation coverage may be continued for 18 months, measured from the date of the Qualifying Event. If the Qualified Beneficiary make a second election, COBRA continuation coverage will be effective on the day after the date that coverage would otherwise end. You do not have to show evidence of insurability to be entitled to continuation coverage. However, continuation coverage is provided subject to your eligibility for coverage under the Plan. The sponsoring employer reserves the right to terminate continuation coverage retroactively if you are determined to be ineligible for coverage. If coverage is terminated, it cannot be reinstated. You must notify the Plan Administrator if you or a family member becomes covered under any other group health plan, or becomes entitled to Medicare benefits during the continuation period. Coverage may be terminated prior to the maximum coverage period for any of the following reasons:

- 1) Payment of premium is not made as a timely manner.
- 2) If all group health plans maintained by the sponsoring employer are terminated.
- 3) If participant becomes entitled to Medicare after the date of election.
- 4) If participant becomes covered under another group health plan and that plan does not contain any applicable pre-existing condition exclusion.

**Payments for Continuation Coverage**

The actual premium payment for continuation coverage must be made within 45 days of the date the election is made. Payment is considered made on the date sent. The maximum

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## COBRA Tip:

Send Qualifying Event forms:

1. With the Election Form, QE Cover letter, and HIPAA Certificate.
2. As soon as possible, but no later than 44 days after the qualifying event date (if the employer is also the plan administrator).

## Qualifying Event Forms Packet

This packet contains form for use following a qualifying event that is:

- A) Termination of employment
- B) Reduction in hours of employment
- C) Death of employee
- D) Divorce or legal separation
- E) Employee becomes qualified Medicare
- F) Child's loss of dependent status

Packet Contents:

- 1) Qualifying Event Notice
- 2) Election Notice

ERISA Section 606(c) requires the plan administrator to notify a qualified beneficiary of their COBRA rights within 14 days after the plan administrator is notified by the employer that a qualifying event has occurred. When the employer is also the plan administrator, the employer must provide notice to the qualified beneficiary within 44 days of the qualifying event date.

<b>Date of Notice</b>		<b>Mailing Method</b>	
<b>Name of Individual(s)</b>			
<b>Address</b>			
<b>City, St, Zip</b>			
<b>Notes:</b>			

## COBRA Continuation Coverage Election Notice

10/5/2010

Dear: [*Identify the qualified beneficiary (ies), by name or status*]

**This notice contains important information about your right to continue your health care coverage in the [*enter name of group health plan*] (the Plan).** Please read the information contained in this notice very carefully.

To elect COBRA continuation coverage, follow the instructions on the following pages to complete the enclosed Election Form and submit it to us.

If you do not elect COBRA continuation coverage, your coverage under the Plan will end on [*enter date*] due to:

- End of employment
- Divorce or legal separation
- Death of employee
- Entitlement to Medicare
- Reduction in hours of employment
- Loss of dependent child status

Each person (“qualified beneficiary”) in the category(ies) checked below is entitled to elect COBRA continuation coverage, which will continue group health care coverage under the Plan for up to: (check one)

<input type="checkbox"/>	18 months (for termination of employment and reduction of hours).
<input type="checkbox"/>	36 months (for other qualifying events).

- Employee or former employee
- Spouse or former spouse
- Dependent child(ren) covered under the Plan on the day before the event that caused

- the loss of coverage
- Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan

If elected, COBRA continuation coverage will begin on:

Coverage Begin Date:	
Coverage End Date: (18 or 36 months from qualifying event date, depending on the type of qualifying event.)	

You may elect any of the following coverage options in which you are already enrolled for COBRA continuation coverage: You are currently enrolled in:

Coverage Type	Plan Name

Cost of COBRA continuation coverage:

Coverage/Plan	Monthly Premium			
	Employee	EE+ Spouse	EE+ Child(ren)	Family

Election Timeframe

You have 60 days to elect COBRA, measured from the later of the date of this notice or date coverage is lost. Coverage must be elected by this date.	COBRA Election Deadline

If you have any questions about this notice or your rights to COBRA continuation coverage, you should contact:

Company Name	
Contact Name	
Phone	
Address	
City, State, Zip	

### COBRA Continuation Coverage Election Form

**Instructions:** To elect COBRA continuation coverage, complete this Election Form and return it to us. Under federal law, you have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan.

Send completed Election Form to: [*Enter Plan Administrator Name and Address*]

This Election Form must be completed and returned by mail. The form must be post-marked no later than [*enter date*]. (This date is 60 days from the later of the date of notice, or date coverage is lost.)

If you do not submit a completed Election Form by the due date shown above, you will lose your right to elect COBRA continuation coverage. If you reject COBRA continuation coverage before the due date, you may change your mind as long as you furnish a completed Election Form before the due date. However, if you change your mind after first rejecting COBRA continuation coverage, your COBRA continuation coverage will begin on the date you furnish the completed Election Form.

Read the important information about your rights included in the pages after the Election Form.

I (We) elect COBRA continuation coverage in the [*enter name of plan*] (the Plan) as indicated below:

Name	Date of Birth	Relationship to Employee	SSN (or other identifier)
------	---------------	--------------------------	---------------------------

a. \_\_\_\_\_

[*Add if appropriate:* Coverage option(s): \_\_\_\_\_]

b. \_\_\_\_\_

[*Add if appropriate:* Coverage option(s): \_\_\_\_\_]

c. \_\_\_\_\_

[*Add if appropriate:* Coverage option(s): \_\_\_\_\_]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Relationship to individual(s) listed above

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Print Address

\_\_\_\_\_  
Telephone number

## **Important Information about Your COBRA Continuation Coverage Rights**

### **What is continuation coverage?**

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage when there is a “qualifying event” that would result in a loss of coverage under an employer’s plan. Depending on the type of qualifying event, “qualified beneficiaries” can include the employee (or retired employee) covered under the group health plan, the covered employee’s spouse, and the dependent children of the covered employee.

Continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries under the Plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan, including open enrollment and] special enrollment rights.

### **How long will continuation coverage last?**

In the case of a loss of coverage due to end of employment or reduction in hours of employment, coverage generally may be continued only for up to a total of 18 months. In the case of losses of coverage due to an employee’s death, divorce or legal separation, the employee’s becoming entitled to Medicare benefits or a dependent child ceasing to be a dependent under the terms of the plan, coverage may be continued for up to a total of 36 months. When the qualifying event is the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA continuation coverage for qualified beneficiaries other than the employee lasts until 36 months after the date of Medicare entitlement. This notice shows the maximum period of continuation coverage available to the qualified beneficiaries.

Continuation coverage will be terminated before the end of the maximum period if:

- any required premium is not paid in full on time,
- a qualified beneficiary first becomes 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 qualified beneficiary first becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing continuation coverage, or
- the employer ceases to provide any group health plan for its employees.

Continuation coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving continuation coverage (such as fraud).

## **How can you extend the length of COBRA continuation coverage?**

If you elect continuation coverage, an extension of the maximum period of coverage may be available if a qualified beneficiary is disabled or a second qualifying event occurs. You must notify the COBRA plan administrator of a disability or second qualifying event in order to extend the period of continuation coverage. Failure to provide notice of a disability or second qualifying event may affect the right to extend the period of continuation coverage.

### *Disability*

An 11-month extension of coverage may be available if any of the qualified beneficiaries is determined under the Social Security Act (SSA) to be disabled. The disability has to have started at some time on or before the 60th day of COBRA continuation coverage and must last at least until the end of the 18-month period of continuation coverage. Contact the COBRA plan administrator for deadlines and notice requirements. Each qualified beneficiary who has elected continuation coverage will be entitled to the 11-month disability extension if one of them qualifies. If the qualified beneficiary is determined to no longer be disabled under the SSA, you must notify the Plan of that fact within 30 days after that determination.

### *Second Qualifying Event*

An 18-month extension of coverage will be available to spouses and dependent children who elect continuation coverage if a second qualifying event occurs during the first 18 months of continuation coverage. The maximum amount of continuation coverage available when a second qualifying event occurs is 36 months. Such second qualifying events may include the death of a covered employee, divorce or legal separation from the covered employee, the covered employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan. These events can be a second qualifying event only if they would have caused the qualified beneficiary to lose coverage under the Plan if the first qualifying event had not occurred. You must notify the Plan within 60 days after a second qualifying event occurs if you want to extend your continuation coverage.

## **How can you elect COBRA continuation coverage?**

To elect continuation coverage, you must complete the Election Form and furnish it according to the directions on the form. Each qualified beneficiary has a separate right to elect continuation coverage. For example, the employee's spouse may elect continuation coverage even if the employee does not. Continuation coverage may be elected for only one, several, or for all dependent children who are qualified beneficiaries. A parent may elect to continue coverage on behalf of any dependent children. The employee or the employee's spouse can elect continuation coverage on behalf of all of the qualified beneficiaries.

In considering whether to elect continuation coverage, you should take into account that a failure to continue your group health coverage will affect your future rights under federal law. First, you can lose the right to avoid having preexisting condition exclusions applied to you by other group health plans if you have a 63-day gap in

health coverage, and election of continuation coverage may help prevent such a gap. Second, you will lose the guaranteed right to purchase individual health coverage that does not impose a preexisting condition exclusion if you do not elect continuation coverage for the maximum time available to you. Finally, you should take into account that you have special enrollment rights under federal law. You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your spouse's employer) within 30 days after your group health coverage ends because of the qualifying event listed above. You will also have the same special enrollment right at the end of continuation coverage if you get continuation coverage for the maximum time available to you.

### **How much does COBRA continuation coverage cost?**

Generally, each qualified beneficiary may be required to pay the entire cost of continuation coverage. The amount a qualified beneficiary may be required to pay may not exceed 102 percent (or, in the case of an extension of continuation coverage due to a disability, 150 percent) of the cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving continuation coverage. The required payment for each continuation coverage period for each option is described in this notice.

The Trade Act of 2002 created a tax credit for certain individuals who become eligible for trade adjustment assistance and for certain retired employees who are receiving pension payments from the Pension Benefit Guaranty Corporation (PBGC). Under the tax provisions, eligible individuals can either take a tax credit or get advance payment of 65% of premiums paid for qualified health insurance, including continuation coverage. ARRA made several amendments to these provisions, including an increase in the amount of the credit to 80% of premiums for coverage before January 1, 2011 and temporary extensions of the maximum period of COBRA continuation coverage for PBGC recipients (covered employees who have a nonforfeitable right to a benefit any portion of which is to be paid by the PBGC) and TAA-eligible individuals.

If you have questions about these provisions, you may call the Health Coverage Tax Credit Customer Contact Center toll-free at 1-866-628-4282. TTD/TTY callers may call toll-free at 1-866-626-4282. More information about the Trade Act is also available at [www.doleta.gov/tradeact](http://www.doleta.gov/tradeact).]

### **When and how must payment for COBRA continuation coverage be made?**

#### *First payment for continuation coverage*

If you elect continuation coverage, you do not have to send any payment with the Election Form. However, you must make your first payment for continuation coverage not later than 45 days after the date of your election. (This is the date the Election Notice is post-marked, if mailed.) If you do not make your first payment for continuation coverage in full not later than 45 days after the date of your election, you will lose all continuation coverage rights under the Plan. You are responsible for making sure that the amount of your first payment is correct. You may contact us to confirm the correct amount of your first payment or to discuss payment issues related to your COBRA premium.

Company Name	
Contact Name	
Phone	
Address	
City, State, Zip	

*Periodic payments for continuation coverage*

After you make your first payment for continuation coverage, you will be required to make periodic payments for each subsequent coverage period. The amount due for each coverage period for each qualified beneficiary is shown in this notice. The periodic payments can be made on a monthly basis. Under the Plan, each of these periodic payments for continuation coverage is due on the first day of the coverage period (the first day of the month). If you make a periodic payment on or before the first day of the coverage period to which it applies, your coverage under the Plan will continue for that coverage period without any break. The Plan will not send periodic notices of payments due for these coverage periods.

*Grace periods for periodic payments*

Although periodic payments are due on the dates shown above, you will be given a grace period of 30 days after the first day of the coverage period to make each periodic payment. Your continuation coverage will be provided for each coverage period as long as payment for that coverage period is made before the end of the grace period for that payment.

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.

Your first payment and all periodic payments for continuation coverage should be sent to:

Company Name	
Contact Name	
Phone	
Address	
City, State, Zip	

### **For more information**

This notice does not fully describe continuation coverage or other rights under the Plan. More information about continuation coverage and your rights under the Plan is available in your summary plan description or from the Plan Administrator.

If you have any questions concerning the information in this notice, your rights to coverage, or if you want a copy of your summary plan description, you should contact the plan administrator (details listed on previous page).

Private sector employees seeking more information about rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, can contact the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) at 1-866-444-3272 or visit the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa). State and local government employees should contact HHS-CMS at [www.cms.hhs.gov/COBRAContinuationofCov/](http://www.cms.hhs.gov/COBRAContinuationofCov/) or [NewCobraRights@cms.hhs.gov](mailto:NewCobraRights@cms.hhs.gov).

### **Keep Your Plan Informed of Address Changes**

In order to protect your and your family's rights, you should keep the Plan Administrator informed of any changes in your address and the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

## Initial (General) Notice of COBRA Rights

### Initial (General) Notice of COBRA Rights

The Initial, or General Notice of COBRA rights must be sent to each newly covered individual within 90 days of first becoming covered under the plan. Notices should be sent first class mail, with proof of mailing retained.

**cobraaid** Important Information  
Initial Notice of COBRA Rights

To: \_\_\_\_\_  
From: \_\_\_\_\_  
Date: \_\_\_\_\_

On April 7, 1986 a Federal Law was enacted (Public Law 99-272, Title X) - The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) requiring that most employer sponsored group health plans offer employees and their families the opportunity for a temporary extension of health coverage (called "continuation coverage") in group cases in certain instances where coverage under the plan would otherwise end (called "Qualifying Events").

This notice is intended to advise you, your spouse, and dependent children of your rights and obligations under COBRA should you, your spouse, and dependent children have not elected under your sponsoring employer's group health plan(s). All affected individuals should read this notice carefully and refer to it as the event any action is required. You should retain this notice with other important benefits documents. Many all notices will be sent to your last known address. It is important that your sponsoring employer have your current address.

If you are a covered employee of the sponsoring employer and you are covered by one or more of their group health plans, you have a right to choose continuation coverage for yourself, your spouse and/or dependent children, if you, your spouse and/or dependent children lose your group health coverage because of a reduction in your hours of employment or the termination or the termination of your employment (for reasons other than gross misconduct).

If you are a covered spouse of an employee covered by the Plan of the sponsoring employer, you have the right to choose continuation coverage for yourself and/or dependent children if you lose group health coverage for any of the following reasons:

- 1) The death of your spouse;
- 2) The termination of your spouse's employment (for reasons other than gross misconduct or a reduction in your spouse's hours of employment with the sponsoring employer);
- 3) Divorce or legal separation from your spouse; or
- 4) Your spouse becomes entitled to Medicare.

If you are a covered dependent child of an employee covered by the Plan of the sponsoring employer, you have the right to choose continuation coverage if group health coverage is lost for any of the following reasons:

- 1) The death of the employee;
- 2) The termination of the employee's employment (except for reasons other than gross misconduct or a reduction in the

employee's hours of employment with the sponsoring employer;

- 3) Parent's divorce or legal separation;
- 4) The employee becomes entitled to Medicare; or
- 5) The dependent ceases to be an "dependent child" under the terms of the Plan.

For certain spouses or dependent children of a spouse, you also have a right to choose continuation coverage if you lose coverage within one year before or after your sponsoring employer's commencement of bankruptcy proceedings under Title 11, United States Code.

Under the law, the covered employee or family member has the responsibility to advise the Plan Administrator of a divorce, legal separation, or a child being dependent status under the terms of the group health plan within 60 days of the date of the event or the date on which coverage would end under the Plan because of the event, whichever is later. Written notice must be provided to the Plan Administrator at the address shown on this form. If notice to the Plan Administrator is not made within 60 days, all rights to continuation coverage will terminate. If a covered employee elects coverage for a spouse in anticipation of a divorce or legal separation, the sponsoring employer, upon receiving timely notification, is required to make COBRA continuation coverage available as of the date of divorce or legal separation, but not before that date. (as of January 1, 1997, the term "Qualified Beneficiary" in COBRA proposes also include a child born to or placed for adoption with a covered employee during the period of the employer's continuation coverage. Once a newborn or adopted child is enrolled in continuation coverage pursuant to the Plan under the child will be treated like all other COBRA Qualified Beneficiaries with respect to the same Qualifying Event. The maximum coverage period for the child is measured from the same date as for other Qualified Beneficiaries with respect to the same Qualifying Event, and from the date of the child's birth or placement for adoption.)

The employee has the responsibility to notify the Plan Administrator of "Qualifying Events" that are the employee's death, termination, reduction of hours of employment, or when a covered employee loses coverage due to Medicare Enrollment.

When the Plan Administrator is notified that one of these events has happened, you will receive by certified mail you have the right to choose continuation coverage. Under the law, you have 90 days from the time of the 1<sup>st</sup> class that you would have lost coverage because of the Qualifying Event to elect that coverage.

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### COBRA Tip:

The 2005 Final COBRA Regulations require the Initial/General Notice be sent within 90 days of the individual first becoming covered under the plan.

Proof of mailing should be retained. Including the notice in a "new-hire" packet is not sufficient proof of delivery to a spouse.

**Important Information –General Notice**  
Initial/General Notice of COBRA rights. Continuation coverage rights under COBRA

To:	From:
Date:	Name of Plan:

**Introduction**

On April 7, 1986 a Federal Law was enacted (Public Law 99-272, Title X)—The Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) requiring that most employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health coverage (called “continuation coverage”) at group rates in certain instances where coverage under the plan would otherwise end (called “Qualifying Events”).

This notice is intended to inform you, your spouse, and dependent child(ren) of your rights and obligations under COBRA should you, your spouse, and dependent child(ren) become covered under your sponsoring employer’s group health plan(s). This notice is general in nature. For more information about your rights and obligations under the plan, see your summary plan description or contact your plan administrator. All affected individuals should read this notice carefully and refer to it in the event any action is required. You should retain this notice with other important benefits documents. Since all notices will be sent to your last known address, it is important that your sponsoring employer have your current address. If you or your spouse move, or change your mailing address, you must notify the plan administrator.

**What is COBRA Coverage?**

If you are a covered employee of the sponsoring employer and you are covered by one or more of their group health plans, you have a right to choose continuation coverage for yourself, your spouse and/or dependent child(ren), if you, your spouse and/or dependent child(ren) lose your group health coverage because of a reduction in your hours of employment or the termination of your employment (for reasons other than gross misconduct).

If you are a covered spouse of an employee covered by the Plan of the sponsoring employer, you have the right to choose continuation coverage for yourself and/or dependent child(ren) if you lose group health coverage for any of the following reasons:

- 1) *The death of your spouse.*
- 2) *The termination of your spouse’s employment (for reasons other than gross misconduct) or a reduction in your spouse’s hours of employment with the sponsoring employer.*
- 3) *Divorce or legal separation from your spouse, or;*
- 4) *Your spouse becomes entitled to Medicare.*

If you are a covered dependent child of an employee covered by the Plan of the sponsoring employer, you have the right to choose continuation coverage if group health coverage is lost for any of the following reasons:

- 1) *The death of the employee.*
- 2) *The termination of the employee’s employment (except for terminations due to gross misconduct) or a reduction in the employee’s hours of employment with the sponsoring employer.*
- 3) *Parent’s divorce or legal separation.*
- 4) *The employee becomes entitled to Medicare, or;*
- 5) *The dependent ceases to be a “dependent child” under the terms of the Plan.*

For retirees, spouses or dependent children of a retiree, you also have a right to elect continuation coverage if you lose coverage within one year before or after your sponsoring employer’s commencement of Bankruptcy proceedings under Title 11, United States Code. Under the plan, Qualified Beneficiaries who elect COBRA coverage are required to pay for COBRA continuation coverage.

You must give notice of some Qualifying Events. Under the law, the covered employee or family member has the responsibility to inform the Plan Administrator of a divorce, legal separation, or a child losing dependent status under the terms of the group health plan within 60 days of the date of the event or the date on which coverage would end under the Plan because of the event, whichever is later. Written notice must be provided to the Plan Administrator at the address shown on this form. If notice to the Plan Administrator is not made within 60 days, all rights to continuation coverage will terminate. If a covered employee cancels coverage for a spouse in anticipation of a divorce or legal separation, the sponsoring employer, upon receiving timely notification, is required to make COBRA continuation coverage available as of the date of divorce or legal separation, but not before that date. As of January 1, 1997, the term “Qualified Beneficiary” for COBRA purposes also includes a child born to or placed for adoption with a covered employee during the period of the employee’s continuation coverage. Once a newborn or adopted child is enrolled in continuation coverage pursuant to the Plan’s rules, the child will be treated like all other COBRA Qualified Beneficiaries with respect to the same Qualifying Event. The maximum coverage period for the child is measured from the same date as for other Qualified Beneficiaries with respect to the same Qualifying Event, not from the date of the child’s birth or placement for adoption.

The employer has the responsibility to notify the Plan Administrator of Qualifying Events that are the employee’s death, termination, reduction of hours in employment, or when a covered employee loses coverage due to Medicare Entitlement, and, if the plan provides retiree health coverage, the commencement of a proceeding in bankruptcy with respect to the employer.

**When is COBRA Coverage Available?**

When the Plan Administrator is notified that one of these events has happened, you will in turn be notified that you have the right to choose continuation coverage. Under the

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law, you have 60 days from the later of the 1) date that you would have lost coverage because of the Qualifying Events described above, or 2) the date of the notice of your right to elect continuation coverage to inform the Plan Administrator that you want continuation coverage. You have 45 days from the date of the election to make your first premium payment. All subsequent premium payments are due on the premium due date, and must be paid in full within the grace period defined by the Plan (usually 30 days). Payments are considered "made" on the date sent. If you do not choose continuation coverage during this election period, your group health coverage will end according to the terms of the Plan. If you are an incompetent beneficiary, a responsible third party may elect and/or pay for continuation coverage on your behalf. Please provide the Plan Administrator with the following information:

(use a separate sheet, if needed)

**Employee's Name**

**Employer's SS#**

**Employee's SS#**

**Relationship to Employee**

**Dependent's Name**

**Dependent's SS#**

**Dependent's Mailing Address**

**Dependent's Phone#**

**Dependent's Date of Birth**

**Date of Loss of Coverage**

If you choose COBRA continuation coverage, you are required to be provided with coverage that is identical to the coverage being provided under the Plan to similarly situated employees or family members. Each Qualified Beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage on behalf of their spouses, and parents may elect COBRA continuation coverage on behalf of their children. If group health coverage is lost because of a termination of employment or reduction in hours of employment, the law requires that Qualified Beneficiaries be afforded the opportunity to elect 18 months of COBRA continuation coverage, which is measured from the Qualifying Event date.

For other Qualifying Events, Qualified Beneficiaries other than the covered employee will be afforded the opportunity to elect 36 months of continuation coverage. An 18 month period of continuation coverage may be extended for up to 11 months (for a total of 29 months of continuation coverage) if the Qualified Beneficiary has been determined to be disabled (under Title II or XVI of the Social Security Act) as of the date of the Qualifying Event or within the first 60 days of COBRA continuation coverage. The Qualified Beneficiary must provide written determination of the disability by the Social Security Administration within 60 days of the determination and prior to the end of the 18-month continuation period. The sponsoring employer may charge up to 150% of the applicable premium during the 11-month disability extension. The 11-month extension applies to all disabled and non-disabled Qualified Beneficiaries entitled to continuation coverage as a result of the same Qualifying Event.

Continuation coverage periods of 18 or 29 months may be extended to 36 months for a Qualified Beneficiary other than the covered employee if a second Qualifying Event occurs. A second Qualifying Event may be the death of the employee, divorce, legal separation, employee becoming entitled to Medicare, or a child losing dependent status under the terms of the Plan. To be eligible for the extension,

the second Qualifying Event must occur during the original 18 or 29 month continuation period and the Plan Administrator must be notified, in writing, within 60 days of the second Qualifying Event.

The law also provides that continuation coverage may be cut short prior to the expiration date of the 18, 29, or 36 month period for any of the following reasons:

*1) Your sponsoring employer no longer provides any group health coverage for any of its employees.*

*2) The premium for your continuation coverage is not paid in a timely manner.*

*3) You first become, after the date of election, covered under any other group health plan, which does not contain a pre-existing condition exclusion or limitation that would apply to the Qualified Beneficiary.*

*4) You first become, after the date of election, entitled to Medicare.*

*5) Coverage has been extended for up to 29 months due to a disability and there has been a final determination that the individual is no longer disabled. You are required to notify the Plan Administrator within 30 days of any such final determination.*

You do not have to show that you are insurable to choose continuation coverage. However, under COBRA law, you will have to pay the applicable premium, plus an administrative fee, if applicable, during the 18 or 36-month period of continuation coverage. However, during the 11-month disability extension, you may be required to pay up to 150% of the applicable premium. The law also says that, at the end of the 18-, 29-, or 36-month continuation coverage period, you must be allowed to enroll in an individual conversion health plan if one is provided under the Plan. Also, under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, you may, in certain cases, such as when you exhaust COBRA continuation coverage, have the right to purchase individual health coverage with out being subject to a pre-existing condition exclusion and without having to show evidence of insurability.

#### **If You Have Questions**

This notice is a summary of the law and is general in nature. The law itself and the actual Plan provisions must be consulted with regard to the application of these provisions in any particular circumstances. If you have any questions about COBRA law, or if you have changed marital status, or either you or your spouse has changed addresses, please contact the Plan Administrator at:

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Or, contact the nearest regional or district office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)

**Note:** Some states offer financial aid to assist certain individuals' pay for COBRA coverage. You should check with the appropriate state agency for eligibility and availability. Also, under certain conditions, COBRA coverage may be paid with pre-tax dollars from a cafeteria plan under Section 125, Internal Revenue Code.

*Int01 2 of 2*

## Payment Coupon

### Payment Coupon (Pc04)

The Plan Administrator is not required to provide payment coupons to qualified beneficiaries.

**cobraaid** **Payment Coupon**  
Qualified Beneficiary: Please complete the enclosed form and submit your payment for continuation coverage by the due date. Payments are due on the first day of the month for which coverage will be provided. Payments that are not postmarked within 30 days of the due date will result in cancellation of coverage with no possibility for reinstatement.

Last Name: \_\_\_\_\_ First Name, Middle Initial: \_\_\_\_\_  
Address (if changed): \_\_\_\_\_ SSN: \_\_\_\_\_  
Name of the person making payment (if different): \_\_\_\_\_  
Please make check or money order payable to: \_\_\_\_\_ Total Amount Paid: \_\_\_\_\_  
Payment to Month: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
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### COBRA Tip:

By signing the payment coupon, the individual certifies they have not enrolled in other coverage. This is a good way to make sure the qualified beneficiary does not have other coverage that would subject them to termination of COBRA coverage.

# Payment Coupon

## Qualified Beneficiary:

Please complete this form and submit your payment for continuation coverage by the due date. Payments are due on the first day of the month for which coverage will be provided. Payments that are not postmarked within 30 days of the due date will result in cancellation of coverage with no possibility for reinstatement.

## Employee/Qualified Beneficiary Information

Last Name: \_\_\_\_\_ Date: \_\_\_\_\_  
First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_  
SS# \_\_\_\_\_ Telephone Number: \_\_\_\_\_

## Payment Information

Person Making  
Payment (if  
different)

Total Amount  
Paid \$

Payment for  
Month/Year

Please make check or money order payable to: (if blank, payable to former company/former employer)

By signing below I certify that I have not, since the date of my election, become entitled to Medicare or covered under another group health plan.

Signature

Date:

Pc04 1 of 1

**Documentation Record**

**Documentation Record (Dor01)**  
 Use this form to record any contact by the plan administrator with the qualified beneficiary, third party, or health care provider.

The form is titled "Documentation Record" and includes the following sections:

- Beneficiary Information:** Name of Qualified Beneficiary, Address, Phone, and COB.
- General Information:** Coverage Begin Date, Coverage End Date, Type of Qualifying Event, Monthly Premium, Payment Due Date, and Qualifying Event Date.
- Coverage Type:** Medical, Dental, Vision, Prescription, and Other (checkboxes).
- Plan Type:** Individual, Individual + Spouse, Family, Individual + Child, and Other (checkboxes).
- Notes:** A table with two columns: "Date" and "Notes".

**COBRA Tip:**  
**Documentation is the key to good COBRA administration.**  
 Remember to record important dates, premium amounts, and types of coverage in the "general information" section. Also, make notes of all contact with qualified beneficiaries, third parties, or health care providers.

## Documentation Record

Use this form to document all contact with COBRA continuants (qualified beneficiaries), third parties, and health care providers.

### Employee Information

Qualified Beneficiary Name:		Date:	
Address		City, St, Zip	
Phone:		Social Security#	

### General Information

Coverage Begin Date:			
Coverage End Date:		Type of Qualifying Event:	
Monthly Premium:			
Premium Due Date:		Plan Type: (Individual, Family, etc.)	
Qualifying Event Date:		Type Of Coverage: (Medical, Dental, etc.)	

### Notes:

Date:	Notes:





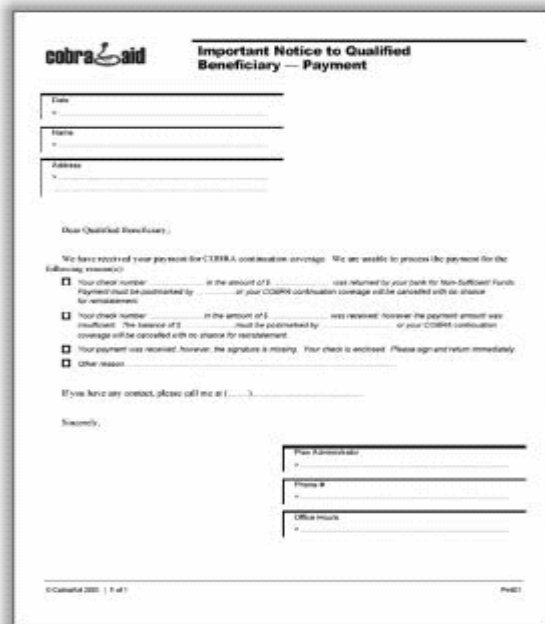
**Payment Record For:** \_\_\_\_\_

Date	Pmt Amount	Amt To Provider	Period of Coverage	Check#	Notes

Payment Received-Additional Info Needed

**Payment Received—Additional Information Needed.**

Send this notice to the qualified beneficiary when a payment is received but cannot be processed because of missing information.



**cobraaid** **Important Notice to Qualified Beneficiary — Payment**

Date \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

Dear Qualified Beneficiary:

We have received your payment for COBRA continuation coverage. We are unable to process the payment for the following reason(s):

- Your check number \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ was returned to your bank for Non-Sufficient Funds. Payment must be cashed by \_\_\_\_\_ at your COBRA continuation coverage will be cancelled with no status for reinstatement.
- Your check number \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ was received. However, the payment amount was insufficient. The balance of \$ \_\_\_\_\_ must be disbursed by \_\_\_\_\_ or your COBRA continuation coverage will be cancelled with no status for reinstatement.
- Your payment was received, however, the signature is missing. Your check is enclosed. Please sign and return immediately.
- Other reason: \_\_\_\_\_

If you have any contact, please call me at (\_\_\_\_\_) \_\_\_\_\_.

Sincerely,

Plan Administrator \_\_\_\_\_  
 Phone # \_\_\_\_\_  
 Office Hours \_\_\_\_\_

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**COBRA Tip:**

Remember to provide contact information so that the qualified beneficiary may contact you for clarification. Also, make sure to check the appropriate box so that the qualified beneficiary knows what information is needed.



**Important information to Qualified Beneficiary –Payment Received**

**Additional Information Needed**

**Employee Information**

Qualified Beneficiary Name:		Date:	
Address:		City, St., Zip	

**(Check one) Payment has been received, but cannot be processed for the following reason.**

<input type="checkbox"/>	Your check number ( ) in the amount of \$_____ was returned by your bank for non-sufficient funds. Payment must be postmarked by _____ or your COBRA coverage will be cancelled with no possibility for reinstatement.
<input type="checkbox"/>	Your check number ( ) in the amount of \$_____ was received; however, the payment amount was insufficient. The balance of \$_____ must be postmarked by _____ or your COBRA coverage will be cancelled with no possibility for reinstatement.
<input type="checkbox"/>	Your payment was received, however the signature was missing. Your check is enclosed. Please sign and return immediately.

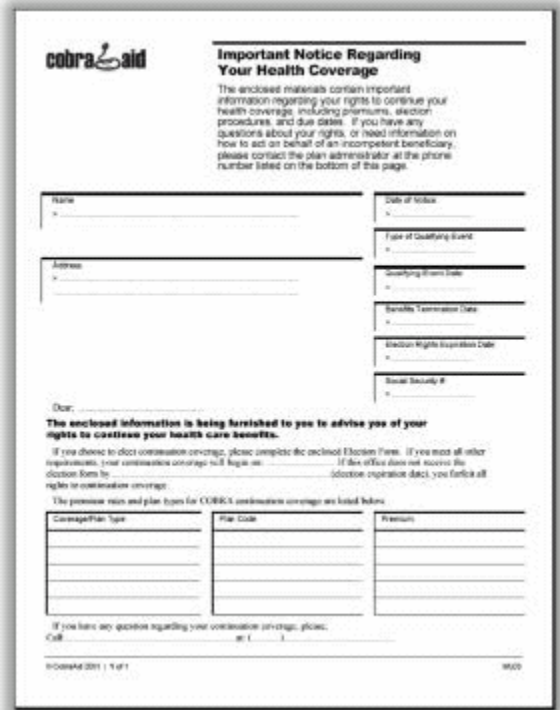
Other (explain): \_\_\_\_\_

**Contact Information**

Plan Administrator:		Company Name	
Address:		City, St, Zip	
Phone:		Office Hours	

**Qualifying Event Cover Letter**

**Qualifying Event Cover Letter (WI03)**  
 This notice should be sent with the Qualifying Event Notice (Qe01 or Qe02), the Election Form (Fe01), and Certificate of Creditable Coverage (Hp06)



The form is titled "Important Notice Regarding Your Health Coverage" and includes the following sections:

- Header:** cobraaid logo and title "Important Notice Regarding Your Health Coverage".
- Introductory Text:** "The enclosed materials contain important information regarding your rights to continue your health coverage, including premiums, election procedures, and due dates. If you have any questions about your rights, or need information on how to act on behalf of an incompetent beneficiary, please contact the plan administrator at the phone number listed on the bottom of this page."
- Form Fields:**
  - Name: \_\_\_\_\_
  - Address: \_\_\_\_\_
  - Date of Notice: \_\_\_\_\_
  - Type of Qualifying Event: \_\_\_\_\_
  - Qualifying Event Date: \_\_\_\_\_
  - Benefits Termination Date: \_\_\_\_\_
  - Election Rights Suspension Code: \_\_\_\_\_
  - Social Security #: \_\_\_\_\_
- Dear:** \_\_\_\_\_
- Key Message:** "The enclosed information is being furnished to you to advise you of your rights to continue your health care benefits."
- Instructions:** "If you choose to elect continuation coverage, please complete the enclosed Election Form. If you meet all other requirements, your continuation coverage will begin on \_\_\_\_\_. If the office does not receive the election form by \_\_\_\_\_, discontinue operation date, you forfeit all rights to continuation coverage."
- Table:**

Coverage/Plan type	File Code	Premium
- Footer:** "If you have any questions regarding your continuation coverage, please call \_\_\_\_\_ at (\_\_\_\_\_) \_\_\_\_\_".
- Page Info:** "COBRA42011 | 1 of 1" and "WI03".

**COBRA Tip:**  
 This notice is part of the Qualifying Event Packet and must be sent with additional notices.



## Important Notice Regarding Your Health Coverage

The enclosed materials contain important information regarding your rights to continue your health coverage, including premiums, election procedures, and due dates. If you have any questions about your rights, or need information on how to act on behalf of an incompetent beneficiary, please contact the plan administrator listed on the bottom of this page.

### Employee Information

Employee Name:		Date:	
Address:		City, St, Zip	
Date of Notice		Social Security#	

### Important Information

Type of Qualifying Event:			
Qualifying Event Date		Benefits Termination Date	
Election Rights Termination Date			

The following individuals are entitled to elect COBRA continuation coverage:

Employer or former employee	Spouse or former spouse	Dependent child covered under the plan on the day before the qualifying event.	Child who is losing coverage under the plan because they are no longer dependent under the terms of the plan.	

If you choose to elect continuation coverage, please complete the enclosed election form. If you meet all other requirements your coverage will continue with no lapse in coverage. If this office does not receive the election form by the election expiration date, you forfeit all rights to COBRA continuation coverage.

### Coverage/Plan Type

### Premiums

Coverage/Plan Type	Premiums

If you have any questions, please call:	
---	--

HIPAA Certificate

**Certificate of Creditable Coverage (HIPAA Certificate)**

This form is intended to satisfy HIPAA's notice requirements.



**Important:** This certificate provides evidence of your prior health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for certain medical conditions that you have before you enroll. This certificate may need to be provided if medical advice, diagnosis, care, or treatment was recommended or received for the condition within the 90-day period prior to your enrollment in the new plan. If you become covered under another group health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to buy the payment in your family, an insurance policy that does not exclude coverage for medical conditions that are present before you enroll.

**Participant Information:**

- Date of this Certificate
- Name of Participant
- Street Address of Participant
- Name of Group Health Plan
- Social Security # of Participant
- City, State, Zip Code

**Dependent Information:** Please list the names of any dependents to whom this certificate applies.

Name	<input type="checkbox"/> Spouse
Name	<input type="checkbox"/> Dependent
Name	<input type="checkbox"/> Dependent

**Company/Contact Information:**

- Company Name
- Address of Company
- City, State, Zip Code
- Plan Administrator/Contact Name
- Phone Number

**Coverage Information:**

- Name of Group Health Plan
- Date Waiting Period or Affiliation
- Date Coverage began
- Date coverage ended or when last coverage is continuing as of the date of this certificate

**COBRA Tip:**

This notice should be provided when:

- 1) The individual loses coverage under the group health plan.
- 2) When the individual becomes eligible for COBRA.
- 3) When the individual terminates coverage under COBRA.
- 4) Upon request.



## Certificate of Group Health Plan Coverage

### Important

This certificate provides evidence of your prior group health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for certain medical conditions that you have before you enroll. This certificate may need to be provided if medical advice, diagnosis, care, or treatment was recommended or received for the condition within the 6-month period prior to your enrollment in the new plan. If you become covered under another group health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to buy, for yourself or your family, an insurance policy that does not exclude coverage for medical conditions that are present before you enroll.

### Employee Information

Name of Participant		Date of Certificate:	
Identification Number of Participant		Address:	
City, St, Zip		Name of Group Health Plan:	

### Name of Individuals for whom this Certificate Applies

Name		Relationship	
Name		Relationship	
Name		Relationship	

### Company/Contact Information (for further information, call the plan administrator listed below)

Company Name		Plan Administrator	
Company Address			
Phone			

### Coverage Information

Name of Group Health Plan		Date Waiting Period or Affiliation Period (if any) began:	
Date Coverage Began		Date Coverage Ended: If coverage is continuing, note "continuing" in this box.	

The individual(s) and/or dependents for whom this certificate applies has at least 18 months of creditable coverage (disregarding periods of coverage before a 63 day break).

	<b>Yes</b>	<b>No</b>
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**Note: Separate certificates will be furnished if information is not identical for the participant and each beneficiary. Please retain this document as proof of creditable coverage.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Statement of HIPAA Portability Rights

### IMPORTANT — KEEP THIS CERTIFICATE.

This certificate is evidence of your coverage under this plan. Under a federal law known as HIPAA, you may need evidence of your coverage to reduce a preexisting condition exclusion period under another plan, to help you get special enrollment in another plan, or to get certain types of individual health coverage even if you have health problems.

**Pre-existing condition exclusions.** Some group health plans restrict coverage for medical conditions present before an individual's enrollment. These restrictions are known as "preexisting condition exclusions." A pre-existing condition exclusion can apply only to conditions for which medical advice, diagnosis, care, or treatment was recommended or received within the 6 months before your "enrollment date." Your enrollment date is your first day of coverage under the plan, or, if there is a waiting period, the first day of your waiting period (typically, your first day of work). In addition, a pre-existing condition exclusion cannot last for more than 12 months after your enrollment date (18 months if you are a late enrollee). Finally, a pre-existing condition exclusion cannot apply to pregnancy and cannot apply to a child who is enrolled in health coverage within 30 days after birth, adoption, or placement for adoption.

If a plan imposes a pre-existing condition exclusion, the length of the exclusion must be reduced by the amount of your prior creditable coverage. Most health coverage is creditable coverage, including group health plan coverage, COBRA continuation coverage, coverage under an individual health policy, Medicare, Medicaid, State Children's Health Insurance Program (SCHIP), and coverage through high-risk pools and the Peace Corps. Not all forms of creditable coverage are required to provide certificates like this one. If you do not receive a certificate for past coverage, talk to your new plan administrator.

You can add up any creditable coverage you have, including the coverage shown on this certificate. However, if at any time you went for 63 days or more without any coverage (called a break in coverage) a plan may not have to count the coverage you had before the break.

- ➔ Therefore, once your coverage ends, you should try to obtain alternative coverage as soon as possible to avoid a 63-day break. You may use this certificate as evidence of your creditable coverage to reduce the length of any preexisting condition exclusion if you enroll in another plan.

**Right to get special enrollment in another plan.** Under HIPAA, if you lose your group health plan coverage, you may be able to get into another group health plan for which you are eligible (such as a spouse's plan), even if the plan generally does not accept late enrollees, if you request enrollment within 30 days. (Additional special enrollment rights are triggered by marriage, birth, adoption, and placement for adoption.)

- ➔ Therefore, once your coverage ends, if you are eligible for coverage in another plan (such as a spouse's plan), you should request special enrollment as soon as possible.

**Prohibition against discrimination based on a health factor.** Under HIPAA, a group health plan may not keep you (or your dependents) out of the plan based on anything related to your health. Also, a group health plan may not charge you (or your dependents) more for coverage, based on health, than the amount charged a similarly situated individual.

**Right to individual health coverage.** Under HIPAA, if you are an "eligible individual," you have a right to buy certain individual health policies (or in some states, to buy coverage through a high-risk



pool) without a pre-existing condition exclusion. To be an eligible individual, you must meet the following requirements:

- You have had coverage for at least 18 months without a break in coverage of 63 days or more;
- Your most recent coverage was under a group health plan (which can be shown by this certificate);
- Your group coverage was not terminated because of fraud or nonpayment of premiums;
- You are not eligible for COBRA continuation coverage or you have exhausted your COBRA benefits (or continuation coverage under a similar state provision); and
- You are not eligible for another group health plan, Medicare, or Medicaid, and do not have any other health insurance coverage.

The right to buy individual coverage is the same whether you are laid off, fired, or quit your job.

- ➔ Therefore, if you are interested in obtaining individual coverage and you meet the other criteria to be an eligible individual, you should apply for this coverage as soon as possible to avoid losing your eligible individual status due to a 63-day break.

**State flexibility.** This certificate describes minimum HIPAA protections under federal law. States may require insurers and HMOs to provide additional protections to individuals in that state.

**For more information.** If you have questions about your HIPAA rights, you may contact your state insurance department or the U.S. Department of Labor, Employee Benefits Security Administration (EBSA) toll-free at 1-866-444-3272 (for free HIPAA publications ask for publications concerning changes in health care laws). You may also contact the CMS publication hotline at 1-800-633-4227 (ask for “Protecting Your Health Insurance Coverage”). These publications and other useful information are also available on the Internet at: <http://www.dol.gov/ebsa>, the DOL’s interactive web pages - Health Elaws, or <http://www.cms.hhs.gov/hipaal>.

**Open Enrollment Letter**

**Open Enrollment Letter (Oe08)**

Send this letter to the Qualified Beneficiary to advise them of their rights to make changes during Open Enrollment.

**cobraaid** **Important Notice to Qualified Beneficiary – Open Enrollment**

Date \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

Dear COBRA Continuant,

Please note that open enrollment for our company will be:  
\_\_\_\_\_ to \_\_\_\_\_  
(start date) (end date)

During open enrollment, you may make changes to your continuation coverage. If you would like to make changes to your continuation coverage, please call the below referenced individual prior to the open enrollment end date for forms and instructions.

Sincerely,

Plan Administrator \_\_\_\_\_  
Phone # \_\_\_\_\_  
Office Hours \_\_\_\_\_

© CobraAid 2008 - Page 1 Oe08

**COBRA Tip:**

Remember, qualified beneficiaries have the same rights as similarly situated active employees and must be notified of their rights to make coverage changes during open enrollment.



## Important Notice To Qualified Beneficiary-Open Enrollment

### Important

During Open Enrollment, you may make changes to your COBRA continuation coverage. If you would like to make changes to your coverage, please contact the plan administrator, listed below, prior to the open enrollment end date, for forms and instructions.

### Employee Information

Name of Participant			
Date:		Address:	
City, St, Zip			

### Company/Contact Information:

Company Name		Plan Administrator	
Company Address			
Phone		Office Hours	

**OPEN ENROLLMENT END DATE** \_\_\_\_\_

**Termination of Coverage**

**Termination of Coverage (Cx108)**

**This letter must be sent to the qualified beneficiary if:**

- 1) Continuation coverage is terminated due to non-payment of premiums.
- 2) The company has terminated all group health plans.
- 3) The qualified beneficiary has obtained other coverage since the date of election, or
- 4) The qualified beneficiary has reached the end of the maximum coverage period.

**Important Notice to Qualified Beneficiary — Termination of Coverage**

Date \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Dear COBRA Continuant:

Your COBRA continuation coverage has terminated effective on the date listed below.

**Termination Date:** \_\_\_\_\_

**Reason:**

Nonpayment of premiums.

Termination of all group health plans.

Qualified Beneficiary has become, after the date of election, covered under another group health plan.

Since the date of election, the Qualified Beneficiary has become entitled to Medicare.

Qualified Beneficiary has reached the end of the Maximum Continuation Period.\*

\*Continuation Option. If a Qualified Beneficiary is COBRA continuation coverage under a group health plan such as a result of the expiration of the maximum coverage period, you may have the option of enrolling under a continuation health plan if such an option is available. For information regarding the availability of this option, please contact the Member Services department of the insurance carrier.

If you have any questions regarding the cancellation of continuation coverage, please contact the Plan Administrator listed below.

Name: \_\_\_\_\_

Plan Administrator: \_\_\_\_\_

Phone #: \_\_\_\_\_

Office Hours: \_\_\_\_\_

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**COBRA Tip:**

The 2005 COBRA regulations have made this notice mandatory. Remember to include all contact information.

**The 2004 Final COBRA regulations require the following notice:**

**Notice of Early Termination of COBRA Coverage**

**This notice should be provided to qualified beneficiaries as soon as practicable after the administrator determines that COBRA coverage must terminate prior to the end of the maximum COBRA coverage period.**

**This notice may be sent with the certificate of creditable coverage required under HIPAA (HIPAA Certificate).**

**The Department of Labor has not issued a model notice of Early Termination of COBRA Coverage. This notice is general in nature and may be customized to meet the needs and terms of a particular plan.**



Important Information Regarding your rights to COBRA continuation coverage.  
**Notice of Termination of COBRA Continuation Coverage**

**Important**

This notice is being provided to inform you that your COBRA continuation of health care coverage under the health care plan or plans listed below has ceased or will cease prior to the end of the maximum period of coverage.

If any of the below listed individuals do not reside with you at the address listed on this notice, please notify the plan administrator so that a copy of this notice may be sent.

**Employee Information**

<b>Date of Termination of Coverage</b>		Date of Notice:	
Address		Social Security #	
City, St, Zip		Name of Plan:	

**Coverage will terminate for the following individuals**

Name		Relationship	
Name		Relationship	
Name		Relationship	

**Company/Contact Information:**

Company Name		Plan Administrator	
Company Address			
Phone			

**COBRA continuation coverage terminated, or will terminate, for the following reason: (check one)**

<input type="checkbox"/>	Required Premium was not paid on time.
<input type="checkbox"/>	Individual(s) named above became covered under another group health plan that does not impose any pre-existing condition exclusion for a pre-existing condition of the individual.
<input type="checkbox"/>	Individual(s) named above became enrolled in Medicare.
<input type="checkbox"/>	Employer terminated all group health coverage.



	Individual became entitled to a 29 month maximum coverage period due to disability of a family member, and the Social Security Administration has made a final determination that the family member is no longer disabled.	
	For Cause:(explain)	

If you disagree with this determination (that is, you believe that your COBRA coverage should not have been terminated), you may appeal. If you would like to appeal:

- 1) Send a written appeal to the plan administrator (listed above) within 30 days of your receipt of this notice.
- 2) Explain why you believe that your COBRA continuation coverage was improperly terminated, including 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.

Your appeal will be reviewed and a response will be provided within 14 days by:

---

(Name and title of person or committee acting on behalf of plan administrator)

If you have any questions regarding the information in this notice, please contact the plan administrator.

A certificate of creditable coverage (HIPAA certificate) may be included with this notice.

**Election Confirmation Letter**

**Election Confirmation Letter (Ecl010)**  
 This letter should be sent to the qualified beneficiary to confirm receipt of the Election Form and to request additional information, if needed.

**cobraaid** **Important Notice to Qualified Beneficiary — Payment Coupons Enclosed**

Date \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Dear Qualified Beneficiary:

We have received your COBRA Continuation Coverage Election Form. Enclosed are payment coupons for your convenience.

**Initial Payment Due Date:** \_\_\_\_\_ (21 days from date completed Election Notice was sent)

Future premium payments are due on the first day of the month for which coverage applies.

**Additional Information Needed:**

- Please complete the enclosed enrollment form and return to our office immediately.
- Initial Premium Payment was received, however, the amount is incorrect. Please pay this amount \$\_\_\_\_\_.
- Initial Premium Payment was received, however, the check was returned to your bank for Non-Sufficient Funds (NSF). Please send a check or money order in the amount of \$\_\_\_\_\_ no later than \_\_\_\_\_.
- Other: Please call the Plan Administrator at the number listed below.

Plan Administrator \_\_\_\_\_

Phone # \_\_\_\_\_

Office Hours \_\_\_\_\_

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**COBRA Tip:**  
 Remember to include contact information on all correspondence.



## Important Notice to Qualified Beneficiary

### Payment Coupons Enclosed

We have received your COBRA continuation coverage election form. Enclosed are payment coupons for your convenience.

### Employee Information

Name of Participant		Date:	
Address:			
City, St, Zip			

### Payment Information

Initial Payment Due Date*		*(45 days from the date completed election notice was sent)	
---------------------------	--	---	--

### Additional Information Needed

	Please complete the enclosed enrollment form and return it to our office immediately.
	Initial premium payment was received, however, the amount is incorrect. Please pay this amount \$ _____
	Initial premium payment was received, however, the check was returned by your bank for non-sufficient funds (NSF). Please send a check or money order in the amount of \$ _____, no later than _____
	<b>Other. Please call the Plan Administrator at the number listed below.</b>

Company Name \_\_\_\_\_  
Plan Administrator \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Ecl010 1 of 1

**The 2004 Final COBRA regulations require the following notice:**

**Notice of COBRA Unavailability**

**This notice should be provided in the event COBRA continuation coverage is denied. The notice should be sent not more than 14 days after receipt of a notice of a qualifying event regardless of the basis of the denial and regardless of whether the notice involves a first qualifying event, second qualifying event, or a request for a disability extension.**

**The Department of Labor has not issued a model notice of COBRA unavailability. This notice is general in nature and may be customized to meet the needs and terms of a particular plan.**



**Important**

**Notice of COBRA Unavailability**

We received from you, or persons on your behalf, a request for continued health care coverage (COBRA) or a notice of certain information regarding the occurrence of an event that could constitute a "qualifying event" under the COBRA health care coverage continuation rules under the health care plan or plans listed below.

**Employee Information**

Name of Participant			Date:	
Social Security #		Address:		
City, St, Zip		Name of Plan:		

**Notice of Unavailability**

This notice provided on behalf (name of health care plan)		Date notice received from participant	
---	--	---------------------------------------	--

On the date listed above, we received from you, or persons on your behalf, a request for continued health care coverage or a notice or certain information regarding the occurrence of an event that could constitute a "qualifying event" under the COBRA health care coverage continuation rules under the health care plan or plans listed above.

The notice or information stated or implied that you and/or one or more of your dependents are "qualified beneficiaries" entitled to COBRA continuation coverage because: (insert the nature of the qualifying event below (e.g. divorce, legal separation, cessation of dependent status, etc.) if the notice referred to a "second" qualifying event or disability determination by the Social Security Administration.

Qualifying Event		
------------------	--	--

Your notice was reviewed by: (insert the name and title of person or committee acting on behalf of the plan administrator.		<b>Plan Administrator</b>	
--	--	---------------------------	--

**It was determined that continuation coverage, or extended continuation coverage, if the request was for an extension of COBRA on account of a second qualifying event, is not available to you (and your dependent(s), if applicable). The reason for the decision is:**

State reason for declination of coverage: include any plan provisions, facts, or other COBRA provisions, including IRS and DOL regulations that form the basis of this decision.	
--	--

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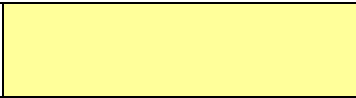
In making this decision, the following information, if any, was considered: *(identify any additional documents reviewed or steps taken in reaching the determination:*

**Coverage Information**

As a result, you (and/or your dependents, if applicable) **are not entitled to COBRA continuation coverage (or extended COBRA continuation coverage, if applicable) under the health care plan or plans listed on this notice.**

---

Your coverage has terminated, or will terminate on:



---

**If you disagree with this determination, you may appeal it by following contacting the plan administrator for more information.**



**Important Information Regarding Your Rights To COBRA Continuation Coverage.**

**Notice of Termination of COBRA Continuation Coverage.**

**Conversion Option**

This notice is being provided to inform you that your COBRA continuation of health care coverage under the health care plan or plans listed below has ceased or will cease as a result of the qualified beneficiary having reached the end of the maximum continuation period.

If any of the below listed individuals do not reside with you at the address listed on this notice, please notify the plan administrator so that a copy of this notice may be sent.

**Conversion Option:**

If a qualified beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the maximum coverage period, you may have the option of enrolling under a conversion health plan if such an option is available. For more information regarding the availability of this option, please contact the Member Services department of the insurance carrier.

Date of Termination of Coverage		Name of Qualified Beneficiary		Date of Notice
Address			Social Security #	
City, State, Zip		Name and phone number of Plan.		

**Coverage will terminate for the following individuals.**

Name		Relationship	
Name		Relationship	
Name		Relationship	

**Company/Contact Information**

Company Name		Plan Administrator	
Company Address			
Phone			

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