Common COBRA Mistakes That Will Cost Your Company Money
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Pennsylvania
Connecticut
District of Columbia
Agenda

1. Introduction to COBRA
2. COBRA Administration
3. Expanded COBRA Coverage
4. Mini-COBRA Laws
5. 15 Common COBRA Mistakes that Will Cost Your Company Money
6. Questions?
Introduction to COBRA

- COBRA gives workers and their families who lose eligibility for their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in hours worked, transition between jobs, death, divorce, and other life events (Qualifying Events or “QEs”).

- Qualified individuals (called Qualified Beneficiaries or “QBs”) may be required to pay the entire premium for coverage up to 102% (and for extended disability up to 150%) of the cost of the plan.

- COBRA generally requires group health plans sponsored by employers with 20 or more employees in the prior year to offer employees and their families the opportunity for a temporary extension of health coverage (called continuation coverage) in certain cases where coverage under the plan would otherwise end.

- COBRA outlines how employees and their family members may elect continuation coverage.

- COBRA also requires employers and plans to provide notices at several, specific times during an employee’s tenure with the employer.
COBRA Administration - Current Law/Regs.

- Initial Rights to COBRA notice sent within 90 days of enrollment on group health plan delivered via U.S. Mail
- Eligibility notification to Qualified Beneficiaries delivered via U.S. Mail
- Enrollment tracking
- Direct billing to Qualified Beneficiaries
- Remittance of paid premiums/fixed costs to insurance companies
- Model notices adopted and communications reviewed for regulatory compliance
- Scanned accounting of correspondence
- Open enrollment for QBs
- Reporting
  - QB details, pending and enrolled
  - Payment history
ARRA offered a subsidy for these people back to Sept 2008 (it has long since expired)

<table>
<thead>
<tr>
<th>QUALIFYING EVENT</th>
<th>QUALIFIED BENEFICIARIES</th>
<th>MAXIMUM PERIOD OF CONTINUATION COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination (for reasons other than gross misconduct) or reduction in hours of employment</td>
<td>Employee, Spouse, Dependent Child</td>
<td>18 months</td>
</tr>
<tr>
<td>Employee enrollment in Medicare</td>
<td>Spouse, Dependent Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Divorce or legal separation</td>
<td>Spouse, Dependent Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Death of employee</td>
<td>Spouse, Dependent Child</td>
<td>36 months</td>
</tr>
<tr>
<td>Loss of &quot;dependent child&quot; status under the plan</td>
<td>Dependent Child</td>
<td>36 months</td>
</tr>
</tbody>
</table>
Expanded Continuation Coverage for Fully Insured Plans in Certain States

- Seven states have continuation laws that extend, for certain individuals (generally 55 and older), following certain Qualifying Events, continuation coverage to the time when the individual is eligible for Medicare. These states include Illinois, Louisiana, Maryland, Missouri, New Hampshire and Oregon. In addition, in New Mexico, group plans offered through the New Mexico Health Insurance Alliance continue coverage indefinitely.

- In New Jersey, an individual considered "disabled," under some circumstances, may continue coverage until they are no longer considered disabled.

- The New Mexico Health Insurance Alliance permits some individuals to continue to maintain Alliance coverage indefinitely. In order to be eligible an individual must have maintained Alliance group coverage for 6 months and no longer be eligible for this coverage for almost all reasons (i.e. loss of employment, loss of policy, aging off parents' policy, death, divorce). Premiums for continuation coverage through the Alliance are about 9% higher than typical group premiums.

- In North Dakota, except in the case of divorce, continuation coverage lasts 39 weeks. In the case of divorce, continuation coverage can last up to 36 months, and insurers are permitted to charge 102% of the group rate.
Expanded Continuation Coverage - Continued

- Oklahoma - Information applies to the maximum duration of continuation coverage for non-HMO plans in OK where there are longer periods of extension (3-6 months) for those undergoing treatment or pregnancy at termination of coverage. HMOs are required to extend coverage through pregnancy or ongoing inpatient treatment.

- In Virginia, insurers have the option of offering either continuation or conversion.

- In Washington, insurers are required to offer employers the option of having a continuation coverage provision, however, continuation coverage is not mandated in group policies.

- In Rhode Island, an employee’s ex-spouse may remain active on the employer’s plan for up to 3 years before beginning a 36-month period of COBRA coverage (provided there is no “new spouse” to cover).
Elsewhere - - > What is Cal-COBRA?

- Cal-COBRA is the California program that is similar to federal COBRA.

- Cal-COBRA is different from the federal program in two ways:
  1. Cal-COBRA applies to employers and group health plans that cover from 2-19 employees; and
  2. It lets you keep your health coverage for a total of up to 36 months. Also once federal COBRA is exhausted, Cal-COBRA may extend continuation coverage up to a combined total of 36 months of coverage.

- In essence, for employers with 20 or more employees, COBRA QBs remain on your COBRA rolls for months 1-18, then they go directly onto the carrier’s COBRA rolls for months 19-36 (provided you keep your fully-insured CA policy with that carrier).

- Cal-COBRA coverage is also available for dental, vision and other specialized health plans, if these plans were provided by the employer.
Who is responsible for Cal-COBRA?

• Health insurers are the ones that are responsible.

(a) A health insurer that provides coverage under a group benefit plan to an employer shall offer an insured who has exhausted continuation coverage under COBRA the opportunity to continue coverage for up to 36 months from the date the insured's continuation coverage began if the insured is entitled to less than 36 months of continuation coverage under COBRA. So, when a plan participant exhausts his/her Federal COBRA coverage, they apply directly to the health insurer to continue for months 19 through 36.
Mini-med Plans

- Mini-med plans tend to provide bare-bones health care coverage at an affordable rate to mostly blue-collar and entry-level workers, as well as part-timers, temporary staffers and seasonal employees, who were nearly given a death sentence under health care reform.

- If you have an employee who leaves the job and your workplace has 20 or more employees, the federal COBRA law entitles them and their dependents to stay on the employer’s group plan for up to 18 months so long as they pay the full premium, which can be costly. COBRA notices need to be sent to these individuals as well.
Mini-COBRA Laws

• Most states have also passed laws that expand the right to those working in smaller companies, usually with 2-19 employees.

• Self-insured health plans are not subject to state insurance laws; they are governed by the U.S. Department of Labor, ERISA, HIPAA and COBRA regulations published by the IRS.

• Coverage under these state continuation programs may differ in duration, restrictions, pricing, and eligibility from the coverage provided to workers under the federal law.
## Eligibility for Mini-COBRA by State

<table>
<thead>
<tr>
<th>State</th>
<th>Length of time eligible for COBRA</th>
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<tbody>
<tr>
<td>Arkansas</td>
<td>4 months</td>
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<tr>
<td>California</td>
<td>36 months</td>
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<tr>
<td>Colorado</td>
<td>18 months</td>
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<tr>
<td>Connecticut</td>
<td>36 months</td>
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<tr>
<td>District of Columbia</td>
<td>3 months</td>
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<tr>
<td>Florida</td>
<td>29 months</td>
</tr>
<tr>
<td>Georgia</td>
<td>3 months</td>
</tr>
<tr>
<td>Hawaii</td>
<td>3 months</td>
</tr>
<tr>
<td>Illinois*</td>
<td>24 months</td>
</tr>
<tr>
<td>Iowa*</td>
<td>9 months</td>
</tr>
<tr>
<td>Kansas</td>
<td>18 months</td>
</tr>
<tr>
<td>Kentucky</td>
<td>18 months</td>
</tr>
<tr>
<td>Louisiana*</td>
<td>12 months</td>
</tr>
<tr>
<td>Maine</td>
<td>12 months</td>
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<tr>
<td>Maryland</td>
<td>18 months</td>
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<tr>
<td>Massachusetts</td>
<td>36 months*</td>
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<tr>
<td>Minnesota</td>
<td>36 months</td>
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<tr>
<td>Mississippi*</td>
<td>12 months</td>
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<tr>
<td>Missouri*</td>
<td>9 months</td>
</tr>
<tr>
<td>Nebraska</td>
<td>12 months</td>
</tr>
<tr>
<td>Nevada</td>
<td>36 months</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>36 months</td>
</tr>
</tbody>
</table>

*In these states, group carriers have the discretion not to continue coverage for certain coverage benefits such as prescription drug coverage, dental benefits and vision benefits.*

### Source
The Kaiser Family Foundation at [statehealthfacts.org](http://statehealthfacts.org) and Georgetown University's "Consumer Guides For Getting and Keeping Health Insurance.”
Did You Know?

• All group health plans maintained by employers with 20 or more employees are subject to federal COBRA provisions. This includes corporations, partnerships, tax-exempt organizations, as well as state and local governments.

• Offering benefits to your COBRA-eligible employees and qualified beneficiaries is an important legal compliance requirement.

• It is critical that continuation of benefits for this special group of plan participants be managed properly and that notifications be generated in a timely fashion.

Don’t make some of these common mistakes….
1. **Thinking that COBRA Does Not Apply to Your Business**

- COBRA is applicable to group health plans provided by businesses that employ 20 or more employees, whether in the private or public sector.

- Your business may be exempt from COBRA regulations if you had less than 20 employees for 50% of the business in days in the previous calendar year.

- Both **full** and **part-time** employees are **counted** and any employees who work in subsidiaries or companies that may be partially held by your own.

- Most states have incorporated state specific COBRA regulations down to 2 employees.
2. Assuming COBRA Does Not Apply to Your Business’ Health Plan

• If COBRA applies to your business, you may still be exempt depending on your health plan. Health plans that may be covered under COBRA include:
  • Medical, dental, vision and prescription drug plans
  • Drug and alcohol treatment programs
  • Employee assistance or other wellness programs that provide medical care
  • On-site health care
  • Health FSAs and HRAs
  • Self-funded medical reimbursement plans

• Plans which may be exempt from COBRA regulations provided that they do not provide medical care include:
  • Long-term care
  • Accidental death & dismemberment
  • Group term life insurance
  • Long and short-term disability
  • Wellness programs or employee assistance programs that do not provide care
  • Exercise/fitness centers
  • First-aid facilities
3. Not Being Aware of Who is Entitled to COBRA Coverage and When

- Employers can get into trouble by not offering COBRA to eligible employees or offering COBRA to employees who are not eligible for this coverage.

- A Qualifying Event is one which triggers coverage for qualified beneficiaries (QBs).

- Any employee or dependent of an employee covered by your group health plan on the day before the qualifying event is a QB.

- Triggering events include:
  - Termination of covered employee’s employment (for reasons other than gross misconduct).
  - Reduction in hours of covered employee’s employment.
  - Covered employees becoming entitled to Medicare (only a QE for the employee’s spouse and dependents).
  - Divorce or legal separation of a covered employee.
  - Death of a covered employee.
  - Loss of dependent child status under the plan rule.
4. Giving No Information

• If your plan is not exempt from COBRA regulations, you are required to notify eligible employees of COBRA coverage.

These are required COBRA notices:
• Initial Notice of General Information regarding COBRA and the plan’s procedures. (This notice must be provided to QBs in 90 days or less after coverage under the eligible plan and provided in writing).
• Election Notice – This notice spells out the QBs rights and obligations under the COBRA regulations. (This notice is to be provided to QBs in 14 days or less after a qualifying event has been reported to the plan administrator or 44 days if the employer is the plan administrator).
• Notice of Unavailability – This notice must be provided to those who experience a qualifying event but are ineligible for COBRA coverage. This is a written explanation of ineligibility and must be provided in the same time frame as election notices.
• Notice of Early Termination – QBs must be notified in the event of early termination of coverage. This notice must be provided to QBs as promptly as possible.
• Employer’s Notice of Qualifying Event – The employer has the responsibility to notify the plan administrator of certain qualifying events within 14 days.
5. Providing Inaccurate Information

- Employers have the responsibility to ensure the information provided is accurate and complete.

- General Notices must include the name of the plan, the name and contact information for a person qualified to provide information about the plan and about COBRA coverage.

- A description of COBRA coverage and eligibility under the plan, the procedures covering notice for Qualifying Events and statements informing the employee that more information may be obtained from the plan administrator and reminding the employee to notify the plan administrator of change in addresses.

- The Election Notice must contain the plan name, name and contact information for someone qualified to provide information on the plan and on COBRA coverage, identification of a qualifying event, identification of the QB or QBs, a description of COBRA coverage, the amount a QBs must pay for this coverage, explanations of how to elect coverage and by when this must be done and what happens if COBRA coverage is waived and statements on the right of each QB to elect this coverage, informing the employee that more information may be obtained from the plan administrator and reminding the employee to notify the administrator of any change of address.
6. Breaking Your Own Rules

- Plans must have policies for which cover the notification of eligible employees and QBs as well as the plan administrator of QEs such as dependents losing their dependent status, secondary QEs and SSA disability or loss of same.

- These policies must be provided in writing and clearly explain who is to be notified, when and how.

- Policies also need to be in place to ensure the QBs are given a minimum of 60 days to elect for COBRA coverage. QBs must decide to elect on behalf of dependent minors.

7. Providing Insufficient Coverage

- The coverage given to a QBs under COBRA is required to be the same coverage as that given to individuals covered under the plan who are similarly situated. You may not reduce/alter coverage for QBs, unless you also reduce coverage for active (covered) employees.
8. Charging Too Much (or Not Enough)

- QBs may be charged for COBRA coverage. These costs are 2% higher than the premium charged (by the carrier, or premium equivalent if it is a self-funded plan) for current employees covered by the plan, with premiums of up to 150% for certain QBs in the event of disability extensions. If an employee elects COBRA, the first premium payment is due 45 days following the date of their election. Subsequent payments are due within 30 days of the premium due date.

9. Not Keeping Documentation

- If your COBRA compliance isn’t a matter of record, you will still be considered non-compliant, no matter how well you’ve performed in regards to the regulations. Employers should keep thorough records of any and all COBRA-related coverage, Notices, events and payments.

10. Bad Timing

- Failing to provide COBRA coverage for the required length of time is one of the most serious mistakes employers make in administering their COBRA coverage. The maximum period of COBRA coverage is 18 months for terminated employees or in cases of reduction of hours worked. For all other QEs, the maximum period of coverage is 36 months. Coverage may be extended or terminated earlier, depending on the specific situation.
11. **Attempting to Save Money and Self-Administering**

- Trying to save a few dollars by self-administering rather than hiring a qualified COBRA administrator? Proper administration will help you to avoid penalties, and also to keep your COBRA costs as low as legally possible.

12. **Watch the Hours**

- If access to your health plan is determined by the number of hours a week employees work — for instance, they have to work a minimum of 30 hours to get coverage — then you’ll have to offer COBRA to any employee whose hours dip below that number and who loses coverage as a result.
13. Don’t Forget the Spouse

- You probably know you’re obligated to send a notice of a QE to the employee’s residence so that a spouse is kept in the loop. But what if the spouse doesn’t live at the same address? Have employees update their spouses’ contact information, and make it a practice to check that information when COBRA notification comes into play.

14. Coordinate with FMLA

- In most instances when an employees takes leave under the Family and Medical Leave Act, COBRA isn’t an issue, since health coverage normally continues while the employee is on leave. But you’ll want to watch for three FMLA-related situations:
  (a) An employee’s FMLA leave expires, and the employee doesn’t return to work or
  (b) during FMLA leave, an employee notifies you he’s not returning work. In either case, COBRA — and your obligation — may kick in.
  (c) FMLA-leave employees fail to make/pay their required employee contributions.

15. Be Specific About Domestic Partners

- If your plan covers employees’ non-spouse partners, your plan description needs to explain how those partners are treated when there’s a COBRA QE. For instance, what happens when there’s a breakup that’s not a legal divorce? If you’re not specific in your Summary Plan Description (SPD) or other documents, the law generally tilts in favor of the partner.
Questions

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