Benefits Toolkit

Employer's Guide to COBRA Administration

Provided by: **Parrott Benefit Group**

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Introduction

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires employers with 20 or more employees to offer continuation coverage to covered employees, spouses and dependent children when their health coverage would otherwise end due to certain events.

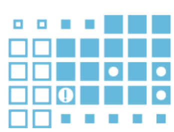
Complying with COBRA is not easy. The law's requirements are complex and include several mandatory notices and multiple deadlines to follow and administer. Not only must employers be familiar with COBRA's legal requirements, but they also must ensure they have the necessary procedures in place to administer COBRA coverage properly. Mistakes can easily occur if an employer does not have an effective process in place to administer COBRA coverage and keep track of strict deadlines.

To appropriately administer COBRA coverage, employers must:

Recognize when COBRA coverage must be offered to a covered employee, spouse and/or dependent child.

Know when to send COBRA notices.

Establish reasonable procedures for qualified beneficiaries to provide COBRA-related notices.



Track important deadlines, including deadlines for paying premiums.

Provide identical coverage to qualified beneficiaries.

This is no small task, but it is one that employers should prioritize because COBRA mistakes can be costly, even if they are unintentional. Due to the complexities of the law and potentially serious consequences for errors, some employers outsource COBRA administration to a third-party vendor. Even when COBRA administration is outsourced, employers will still be responsible for some important aspects of administering COBRA, such as recognizing when COBRA coverage must be offered to a covered employee, spouse or dependent and providing COBRA enrollees with open enrollment opportunities.

This Benefits Toolkit provides a broad overview of COBRA coverage and then outlines the steps to take throughout the administration process. Employers who administer COBRA coverage themselves should periodically review their compliance with COBRA's requirements to avoid potential penalties and lawsuits and control health care spending. Employers who outsource their COBRA administration should also be familiar with COBRA's rules so they can monitor their service provider and help employees with basic COBRA questions.

COBRA Overview

COBRA requires covered employers to offer continuation coverage to employees, spouses and dependent children when group health coverage would otherwise end due to certain specific events. COBRA sets rules for how and when continuation coverage must be offered and provided, how employees and their families may elect and pay for continuation coverage, and when continuation coverage may be terminated. COBRA also requires employers to provide certain notices to plan participants at specific times.

State Continuation Coverage

Many states have their own continuation coverage laws for fully insured group health plans, commonly called mini-COBRA laws. Some mini-COBRA laws only apply to fully insured group health plans that are not subject to COBRA (that is, health plans maintained by employers with fewer than 20 employees). However, other mini-COBRA laws overlap with federal COBRA and apply to fully insured health plans maintained by employers of all sizes. Employers with fully insured health plans must comply with COBRA and any applicable state continuation coverage laws. Keep in mind that self-insured health plans maintained by private-sector employers are typically not subject to state continuation coverage requirements.

This toolkit does not address state continuation coverage laws. For more information on a state's continuation coverage laws, contact a Parrott Benefit Group representative.

Covered Employers

COBRA generally applies to group health plans maintained by private-sector employers who had **20 or more employees** on more than 50% of their typical business days in the previous calendar year. This includes corporations, partnerships and tax-exempt organizations. COBRA also applies to plans sponsored by state and local governments.

The plan administrator is the entity that is legally responsible for compliance with many federal benefits laws, including COBRA. Unless a health plan's documents identify a different entity (e.g., an individual holding a particular role or a committee of individuals), the employer sponsoring the plan is the plan administrator. For purposes of this toolkit, it is assumed that the employer is the plan administrator.

Offering COBRA Coverage

A group health plan is required to offer COBRA continuation coverage to qualified beneficiaries only after a qualifying event has occurred.

A **qualified beneficiary** is an individual who was covered by a group health plan on the day before a qualifying event occurred and who is an employee, an employee's spouse or former spouse, or an employee's dependent child.

Qualifying events are specific events that would cause an individual to lose group health coverage. The type of qualifying event determines who is a qualified beneficiary and the duration of COBRA coverage. An employee's termination or reduction in hours is a qualifying event for covered employees, spouses and children. Certain types of life events are qualifying events for covered spouses and/or children, such as a divorce from the covered employee, the covered employee's death or a dependent child's attainment of age 26.

Duration of Coverage

The period of COBRA coverage offered to qualifying beneficiaries is known as the maximum coverage period. This period is 18 or 36 months, depending on the type of qualifying event. There are situations where the maximum coverage period can be extended (for example, due to a qualified beneficiary's disability) or terminated early (for example, when COBRA premiums are not paid).

COBRA Premiums

Group health plans can require qualified beneficiaries to pay for COBRA continuation coverage, although employers can choose to provide continuation coverage at reduced or no cost. The maximum amount charged to qualified beneficiaries cannot exceed 102% of the cost to the plan for similarly situated individuals covered under the plan who have not incurred a qualifying event. For qualified beneficiaries receiving an extension of COBRA coverage due to disability, the premium for those additional months may be increased to 150% of the plan's total cost of coverage.

Also, qualified beneficiaries cannot be required to pay premiums at the time they make COBRA elections. Employers must provide at least 45 days after a qualified beneficiary's COBRA election for making an initial premium payment. Employers must provide a 30-day grace period for subsequent premiums.

COBRA Notices

Employers must provide covered employees and their families with an initial notice explaining their COBRA rights. Employers must also provide a COBRA election notice after a qualifying event and an early termination notice if COBRA coverage ends before the maximum coverage period expires. Each of these notices has its own content and timing requirements.

COBRA Mistakes

COBRA mistakes can be costly. Possible consequences include excise taxes of $100 per day for each qualified beneficiary impacted by a COBRA mistake; U.S. Department of Labor (DOL) penalties of up to $110 per day; and lawsuits to compel COBRA coverage where a court can award attorneys' fees, interest and other relief, such as liability for medical expenses.

In addition, some COBRA mistakes can increase an employer's health care spending. COBRA beneficiaries are more likely to have chronic health conditions and utilize health care services. Because of this, a 2020 study by the Employee Benefit Research Institute found that the total spending on health care services for COBRA beneficiaries was nearly 300% higher than the spending for active workers and their dependents. To control health care spending, employers should administer COBRA in a way that minimizes this risk; this includes providing COBRA notices on time and terminating coverage early when possible.

Recognize When COBRA Must Be Offered

A key component of administering COBRA coverage is recognizing when COBRA coverage must be offered. To do this, an employer must understand:

- Who is entitled to COBRA coverage (qualified beneficiaries)
- What events trigger an obligation to offer COBRA coverage (qualifying events)

Even employers who outsource their COBRA administration must recognize when COBRA coverage must be offered so they can notify their service provider to start the COBRA election process.

Failing to offer COBRA coverage to a qualified beneficiary can have serious consequences. Employees and their dependents may sue for COBRA coverage, especially if they have large out-of-pocket medical expenses. In addition to statutory penalties, courts in these cases frequently award the qualified beneficiary the amount of their medical bills, reduced by cost sharing and premiums. Depending on the specific circumstances involved, an employer may be liable for paying the medical bills from its own assets, even if it has a fully insured health plan.

Qualified Beneficiaries

A qualified beneficiary is an individual who was covered by the employer's group health plan on the day before a qualifying event occurred and who is an **employee**, an **employee's spouse or former spouse**, or an employee's **dependent child**.

- An "employee" includes any individual who was covered under the group health plan because he or she performed services for the employer sponsoring the health plan.
- A "spouse" means a federally recognized spouse, including same-sex and opposite-sex spouses.
- COBRA does not include a definition for "dependent child." The group health plan's terms determine who is eligible for coverage as a dependent child.

A group health plan may cover individuals who are not qualified beneficiaries (for example, domestic partners, parents, siblings or other household members). Although these individuals may be covered by a group health plan, they do not have an independent right to elect COBRA continuation coverage because they are not qualified beneficiaries.

Qualifying Events

An employer must offer COBRA coverage when a qualified beneficiary's health coverage ends (or would end) due to a qualifying event. Not all losses of health coverage are caused by qualifying events. For example, a cancellation of health coverage—whether at the employee's request or because of the employee's failure to pay premiums—is not, by itself, a qualifying event that triggers the requirement to offer COBRA coverage. Likewise, changing a plan's eligibility rules so that certain categories of individuals will no longer be eligible for coverage is not a qualifying event for COBRA purposes.

COBRA coverage must be offered to qualified beneficiaries when:

- A qualifying event occurs
- The qualifying event causes a loss of coverage under the plan for a covered employee, covered spouse or covered dependent child

The following chart describes the events that are considered qualifying events under COBRA if they result in a loss of group health coverage:

Qualifying Event	Description	Qualified Beneficiaries Who Must Be Offered COBRA
Termination of employment	Termination of a covered employee's employment—whether voluntary or involuntary—for reasons other than gross misconduct. This includes retirement, voluntary quitting, employer-initiated discharges, layoffs, strikes and lockouts. COBRA does not include a definition for "gross misconduct." It is clear, however, that termination for gross misconduct is not the same as a "for cause" termination.	Covered employee, spouse and dependent children
Reduction of hours	A reduction in hours of a covered employee's employment. If health plan eligibility depends on the number of hours worked in a given period and the employee fails to work the required hours, this is considered a reduction of hours. Such situations may include changing positions from full time to part time, a temporary layoff or furlough, or an absence from work due to disability or for any other reason (other than FMLA leave).	Covered employee, spouse and dependent children
Divorce or legal separation	The divorce or legal separation of a covered employee from the covered employee's spouse. Many health plans are designed so that a legal separation will not trigger a loss of coverage and, thus, will not be a qualifying event.	Spouse and dependent children

Qualifying Event	Description	Qualified Beneficiaries Who Must Be Offered COBRA
Death of covered employee	The death of a covered employee.	Spouse and dependent children
Child's loss of dependent status under plan rules	A covered employee's dependent child ceases to be a dependent under the plan's terms. Typically, children are no longer eligible when they attain age 26; however, some health plans extend dependent coverage beyond age 26 to comply with state insurance mandates or as a plan design choice.	Dependent child
Entitlement to Medicare benefits	A covered employee becomes entitled to Medicare. A covered employee is entitled to Medicare when they are eligible for Medicare and enrolled in the Medicare program. An employee's Medicare entitlement will rarely cause a loss of coverage due to the Medicare secondary payer (MSP) rules. Under the MSP rules, most group health plans are usually prohibited from making Medicare entitlement an event that causes a loss of coverage. However, Medicare entitlement may cause a loss of coverage for covered retirees.	Spouse and dependent children

In addition, some complicated situations, including the following, may give rise to COBRA rights that employers should be able to recognize:

Coverage Loss in Anticipation of a Qualifying Event

COBRA must be offered if health coverage is reduced or eliminated in anticipation of a qualifying event. For example, it is common for an employee to drop health coverage for their spouse at open enrollment in anticipation of a divorce. In this type of situation, the elimination is disregarded in determining whether there is a loss of coverage due to the qualifying event. Thus, if a covered employee eliminates coverage of their spouse in anticipation of their divorce, COBRA coverage must be offered to the former spouse upon receiving notice of the divorce.

Failing to recognize when health coverage for a spouse is dropped in anticipation of a divorce is a common COBRA compliance mistake. To address this problem, an employer may want to notify spouses who are dropped from coverage that they must notify the employer (or third-party COBRA administrator, if applicable) of any divorce to protect their COBRA rights.

FMLA Leave

A qualifying event does not occur when an employee takes a job-protected leave under the federal Family and Medical Leave Act (FMLA). The FMLA contains its own continuation coverage rules that require covered employers to maintain group health plan benefits for an employee on FMLA leave on the same terms and conditions as if the employee had continued to work.

However, a COBRA-qualifying event occurs if an employee is covered under a group health plan on the day before the first day of FMLA leave, the employee does not return to work at the end of the FMLA leave, and the employee would, in the absence of COBRA coverage, lose coverage under the group health plan. A COBRA-qualifying event also occurs when an employee notifies the employer, either before starting FMLA leave or while currently on FMLA leave, that they will not be returning to work.

Know When to Send COBRA Notices

Providing the required COBRA notices on time is another important aspect of COBRA administration. There are four main notice requirements under COBRA:

Notice	Description	General Timing
General notice	General description of COBRA rights under the plan	When health plan coverage begins
Election notice	Describes the right to elect COBRA coverage and how to make an election	After a qualifying event occurs
Notice of unavailability	Notifies the individual that they are not eligible for COBRA coverage	When a request for COBRA coverage is denied
Early termination notice	Notifies the individual that their COBRA coverage will terminate early	When a plan terminates COBRA coverage before the end of the maximum coverage period

Employers who do not provide COBRA notices by the applicable deadlines (or fail to provide them at all) may be subject to potential lawsuits and penalties. Also, not providing the COBRA election notice on time may give qualified beneficiaries more time to elect COBRA coverage, which increases the employer's risk for adverse selection and increased health care spending.

Maintain Records

Employers subject to COBRA should maintain records of all COBRA-required notices, including the COBRA election notice, to document their compliance with COBRA's requirements. Maintaining complete and accurate records regarding the content and delivery of these notices will help an employer if a dispute over benefits arises. Employers using a third party for COBRA administration should ensure that their vendor maintains these records and will make them available upon request in the event of a benefits dispute or audit.

General COBRA Notice

Group health plans must provide a written general notice of COBRA rights to each covered employee and spouse (if any) **within 90 days after their health plan coverage begins**.

The general notice must include information about the plan coverage, a list of individuals who can become qualified beneficiaries under the plan, and an explanation of the qualified beneficiaries' obligations when a qualifying event under COBRA occurs. If this information is not provided to covered employees and spouses, the plan's notice deadlines and procedures cannot be enforced.

The DOL maintains a COBRA Model General Notice, including a Spanish version, for employers to use. Employers are not required to use the DOL's model notice. However, use of the model notice, appropriately completed, is considered good faith compliance with the DOL's content requirements for the notice.

COBRA Election Notice

After receiving notice of a qualifying event, an employer must notify qualified beneficiaries of their right to elect continuation coverage under COBRA.

The COBRA election notice must be provided no later than **14 days** after the plan's receipt of the notice of a qualifying event. For qualifying events that do not require notice from the qualified beneficiary (i.e., termination of employment, reduction in hours, employee's death or employee's entitlement to Medicare), the election notice generally must be provided within **44 days** of the date of the qualifying event or the date the qualified beneficiary would otherwise lose coverage, whichever is later. As a practical tip, COBRA election notices should be sent to qualified beneficiaries as soon as possible. The sooner the notice is sent, the sooner the qualified beneficiary may be required to make an election.

The COBRA election notice must be written in a manner calculated to be understood by the average plan participant and contain specific information, including information about the plan, the qualifying event and each qualified beneficiary who is entitled to elect COBRA coverage. It also must include explanations of when plan coverage will otherwise end, how to elect and pay for COBRA coverage, and the duration of COBRA coverage.

The DOL maintains a COBRA Model Election Notice, including a Spanish version, that employers may use. To use the model election notice properly, a plan administrator must fill in the blanks with the appropriate plan information. Employers are not required to use the model notice, but properly using it is considered good faith compliance with the DOL's content requirements for this notice.

Notice of COBRA Unavailability

Employers may deny a request for COBRA coverage (or a request for an extension of continuation coverage) when an individual is not eligible for the coverage (or coverage extension). When a request for COBRA coverage (or a request for a coverage extension) is denied, the employer must give the individual a notice of unavailability of COBRA coverage. The notice must be provided within **14 days** after the request for COBRA coverage is received, and it must explain the reason for denying the request.

Notice of Early Termination

COBRA coverage must generally be made available for a maximum period of 18 or 36 months. However, COBRA coverage may be terminated early for several reasons. When an employer decides to terminate COBRA coverage early, they must give the qualified beneficiary a notice of early termination. The notice must explain why the coverage will terminate earlier than the end of the maximum coverage period, provide the date the coverage will terminate and describe any rights the qualified beneficiary may have to elect other coverage. The notice must be provided **as soon as practicable** following the plan's decision to terminate coverage early.

Establish Reasonable Notice Procedures

COBRA requires employees (or other qualified beneficiaries) to notify their employers of certain qualifying events, second qualifying events, disability determinations and changes in disability status. To administer COBRA coverage, employers must establish reasonable procedures for employees or qualified beneficiaries to provide these notices and must communicate these procedures to employees.

Reasonable Procedures

A plan's procedures for employees or qualified beneficiaries to provide COBRA notices are considered reasonable only if they:

- Are described in the plan's summary plan description (SPD).
- Specify the individual or entity who should receive notices.
- Explain how an employee or qualified beneficiary should provide the notice.
- Describe the information about the qualifying event (or disability determination) that is necessary to include for COBRA rights to apply.
- Comply with the COBRA's timing requirements for providing the notices.

In addition to the SPD, an employer's notice procedures should be described in their COBRA general notice to ensure the procedures are communicated to employees.

If an employer does not have reasonable procedures for providing these notices, employees or qualified beneficiaries may give notice (either written or oral) to the person or unit that handles the employer's employee benefits matters or to the insurance company for a fully insured health plan.

Moreover, employers cannot enforce notice deadlines against employees or qualified beneficiaries if they have not been informed about the COBRA notice requirements and the procedures for providing the notices. To avoid this serious consequence, employers should confirm they have established COBRA notice procedures and that the procedures are described in the plan's SPD and COBRA general notice.

COBRA Notices

Qualifying Event Notice

To trigger COBRA rights, covered employees (or other qualified beneficiaries) are required to notify the employer only when either of the following qualifying events occurs:

- The covered employee divorces or legally separates from their spouse
- A covered child loses dependent status (for example, a dependent child reaches age 26)

An employer can set a time limit for providing this notice, but it cannot be shorter than 60 days from the date of the qualifying event or, if later, the date the qualified beneficiary would lose coverage under the plan because of the qualifying event.

Second Qualifying Events

The maximum COBRA period may be extended for spouses and dependent children when a qualifying event that is a termination of a covered employee's employment or a reduction of hours (both of which trigger an 18-month maximum COBRA period) is followed by a second qualifying event that has a 36-month maximum coverage period. Such qualifying events include the death of the covered employee, a divorce from the covered employee or a dependent child's ceasing to be a dependent.

Qualified beneficiaries must notify the employer of the second qualifying event. The time limit for providing this notice generally cannot be shorter than 60 days from the date of the second qualifying event.

Notice of Disability

Suppose a loss of coverage is a result of an employee's termination of employment or a reduction in hours and a qualified beneficiary is determined by the Social Security Administration (SSA) to be disabled before, at or within 60 days of the date of the qualifying event. In these cases, all qualified beneficiaries within that family are entitled to COBRA for a maximum period of 29 months. The plan can charge qualified beneficiaries an increased premium, up to 150% of the cost of coverage, during the 11-month disability extension.

To be eligible for this disability extension, the disabled qualified beneficiary (or another person on their behalf) must notify the employer of the SSA's determination. An employer can set a time limit for providing this notice of disability, but the time limit cannot be shorter than 60 days, starting from the latest of the following:

- The date on which the SSA issues the disability determination
- The date on which the qualifying event occurs
- The date on which the qualified beneficiary loses (or would lose) coverage under the plan because of the qualifying event

The disability extension may end if the SSA determines the qualified beneficiary is no longer disabled. An employer can require disabled qualified beneficiaries to provide notice when this type of determination is made. Qualified beneficiaries must have at least 30 days after the SSA determination to provide this notice.

Track Important Deadlines

Employers must track several important deadlines to properly administer COBRA coverage, such as the deadlines for qualified beneficiaries to notify the employer of a qualifying event that is a divorce or a dependent child's attainment of age 26 or a second qualifying event. They also include:

- The 60-day deadline for qualified beneficiaries to elect COBRA coverage
- The 45-day deadline for qualified beneficiaries to pay their initial COBRA premiums
- The 30-day grace period for subsequent COBRA premiums
- The maximum coverage period for each qualified beneficiary

Carefully tracking these deadlines can help employers limit COBRA coverage to what is required under the law. Because COBRA enrollees tend to utilize their health care benefits more than active workers and their dependents, limiting COBRA coverage may help control an employer's health care spending.

COBRA Elections

At a minimum, each qualified beneficiary must be given at least **60 days** to choose whether to elect COBRA coverage. This 60-day period is measured from the date the COBRA election notice is provided or, if later, the date on which the qualified beneficiary would otherwise lose coverage due to the qualifying event.

Premium Deadlines

Most employers require employees to pay for COBRA continuation coverage, although employers can choose to provide continuation coverage at reduced or no cost. The maximum amount charged to qualified beneficiaries for COBRA coverage cannot exceed 102% of the cost of the plan for similarly situated individuals who have not incurred a qualifying event. For qualified beneficiaries receiving the 11-month disability extension, the COBRA premium may be increased to 150% of the plan's total cost of coverage for similarly situated individuals.

A qualified beneficiary's COBRA coverage may be terminated if premiums are not paid on time.

There are different payment deadlines for the initial COBRA premium and subsequent premiums:

- **Initial premium**—Qualified beneficiaries cannot be required to pay a premium when they elect COBRA. After electing COBRA coverage, qualified beneficiaries must have at least **45 days** to pay their initial premium. If a qualified beneficiary fails to make any payment before the end of the initial 45-day period, the plan can retroactively cancel the qualified beneficiary's COBRA coverage.

- **Subsequent premiums**—Typically, the due date for premiums after the initial premium payment is the first day of the month for a particular period of coverage (for example, June 1 for coverage during the month of June). Employers must provide a **minimum 30-day grace period** for each subsequent premium payment. A premium payment does not need to be made until the end of the 30-day grace period. To avoid confusion, an employer's COBRA communications should explain that premiums must be paid on the due date (for example, the first day of each calendar month), subject to a 30-day grace period.

Duration of COBRA Coverage

COBRA requires that continuation coverage extends from the date of the qualifying event for 18 or 36 months, depending on the type of qualifying event that gave rise to COBRA rights. In certain situations, employers can terminate COBRA coverage before the end of the maximum coverage period. There are also some situations that require employers to extend COBRA coverage beyond the original coverage period.

To help control costs, employers should track the maximum coverage period for each qualified beneficiary and terminate COBRA coverage at the end of this period. Employers should also be familiar with the events that allow them to terminate COBRA coverage early so they can recognize these situations and avoid providing COBRA coverage for longer than required.

The following chart shows the maximum coverage period for each qualifying event:

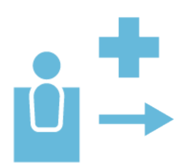
Qualifying Event	Maximum Coverage Period
Termination of employment	18 months
Reduction of hours	18 months
Divorce or legal separation	36 months
Covered employee's death	36 months
Child's loss of dependent status under the plan's terms	36 months
Entitlement to Medicare	36 months

Early Termination of Coverage

Employers may terminate COBRA coverage earlier than the end of the maximum period for any of the following reasons:

Premiums are not paid on a timely basis.

A qualified beneficiary begins coverage under another group health plan after electing continuation coverage.



A qualified beneficiary becomes entitled to Medicare benefits after electing continuation coverage.

The employer ceases to maintain any group health plan.

If continuation coverage is terminated early, the plan must provide the qualified beneficiary with an early termination notice.

Extension of Coverage

There are two situations that can extend the 18-month maximum period of continuation coverage: The qualified beneficiary becomes disabled or a second qualifying event occurs.

Type of Extension	Length	Requirements	Who Qualifies
Disability	11-month extension (for a total of **29 months** of continuation coverage)	The SSA determines that the qualified beneficiary is disabled before the 60th day of continuation coverage, and the disability continues during the rest of the initial 18-month period of continuation coverage.	The qualified beneficiary with the disability and all qualified beneficiaries in the family
Second qualifying event	18-month extension (for a total of **36 months** of continuation coverage)	A second qualifying event occurs: the death of the covered employee, the divorce or legal separation of the covered employee and spouse, or the loss of dependent child status under the plan. The second event can be a second qualifying event only if it would have caused the qualified beneficiary to lose coverage under the plan in the absence of the first qualifying event.	Qualified beneficiaries who are covered spouses and children

Special Rules for Medicare Beneficiaries

Understanding how COBRA coverage and Medicare enrollment interact is another important aspect of COBRA administration.

Although an employee's entitlement to Medicare is rarely a COBRA-qualifying event due to the Medicare secondary payer rules, it can extend the maximum COBRA coverage period for covered spouses and dependents if the employee has a termination or reduction in hours within 18 months after becoming entitled to Medicare. Under this rule, where the spouse or dependent is covered under the plan on the day before the employee's termination or reduction in hours, the spouse and dependent are entitled to COBRA coverage for the longer of:

- Eighteen months from the date of the employee's termination or reduction in hours
- Thirty-six months from the date the employee became enrolled in Medicare

This extension of coverage only applies to covered spouses and dependents; it does not apply to covered employees. Employees will remain eligible for 18 months of COBRA following the termination or reduction in hours.

Also, COBRA coverage can end before the maximum coverage period for a qualified beneficiary who enrolls in Medicare after electing COBRA coverage. This early termination rule only applies to the qualified beneficiary who becomes entitled to Medicare; other family members who are not entitled to Medicare must be allowed to continue their COBRA coverage. To determine whether a qualified beneficiary has become entitled to Medicare after electing COBRA, employers may want to periodically ask COBRA beneficiaries to provide information about their Medicare entitlement, especially those who are reaching age 65.

Provide Identical Coverage to Qualified Beneficiaries

Qualified beneficiaries must be offered coverage that is identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan. Generally, this will be the same coverage the qualified beneficiary had immediately before qualifying for continuation coverage.

In addition, a qualified beneficiary receiving COBRA coverage must receive the same benefits, choices and services that a similarly situated participant is currently receiving under the plan. This means qualified beneficiaries have the same right as active employees during an open enrollment period to choose among available coverage options during the plan's open enrollment period.

A qualified beneficiary is also subject to the same plan rules and limits that would apply to a similarly situated participant, such as copayment requirements, deductibles and coverage limits. The plan's rules for filing benefit claims and appealing any benefit denials also apply. Any changes made to the plan's terms that apply to similarly situated active employees and their families must also apply to a qualified beneficiary receiving COBRA continuation coverage.

Enrollment Rights

To provide identical coverage, employers should make sure they are providing COBRA enrollees with the following plan enrollment rights:

- Change coverage during open enrollment. A qualified beneficiary with COBRA coverage must be allowed to change benefits or coverage options during the employer's open enrollment period to the same extent that similarly situated active employees can make changes. For example, if an employer offers a high deductible health plan (HDHP) and a health plan with a lower deductible, a qualified beneficiary who is covered by the HDHP may elect to change to the lower deductible plan during open enrollment if similarly situated active employees can make this change.
- Add new dependents during open enrollment time. If an employer permits similarly situated active employees to add new family members to their coverage during open enrollment, qualified beneficiaries with COBRA coverage must also be permitted to add family members to their coverage at this time.
- Exercise Health Insurance Portability and Accountability Act (HIPAA) special enrollment rights. Qualified beneficiaries receiving COBRA coverage have the same rights as active employees to enroll family members under HIPAA's special enrollment rules. HIPAA special enrollment rights may apply when:
    - A qualified beneficiary acquires a new spouse or dependent by marriage, birth, adoption or placement for adoption.
    - A dependent loses eligibility for other health coverage, Medicaid or a state Children's Health Insurance Program (CHIP).
    - A dependent becomes eligible for a premium assistance subsidy under Medicaid or CHIP.

Plan Disclosures

In addition to the notices required under COBRA, employers should provide COBRA-qualified beneficiaries with many of the same benefit notices they provide to active employees. For example, employers should provide COBRA enrollees with:

- Open enrollment materials furnished to similarly situated active employees, such as benefit summaries and deadline information
- The summary of benefits and coverage for the health plan
- The health plan's SPD
- Any summaries of material modifications describing changes to the health plan
- The plan's Medicare Part D notice, which explains whether the plan's prescription drug coverage is creditable or non-creditable

Many employers provide benefit notices electronically to current employees by relying on the DOL's safe harbor requirements for electronic delivery. However, it is usually impractical for an employer to use this safe harbor and provide benefit notices electronically to former employees (or spouses and dependents). Thus, employers may need to provide benefit notices to qualified beneficiaries using a different method, such as first-class U.S. mail.

Appendix

This appendix features valuable information about COBRA administration, including a checklist and infographic. Speak with Parrott Benefit Group if you have any questions about these resources.

Printing Help

There are many printable resources in this appendix. Please follow the instructions below if you need help printing individual pages.

1. Choose the "Print" option from the "File" menu.
2. Under the "Settings" option, click on the arrow next to "Print All Pages" to access the drop-down menu. Select "Custom Print" and enter the page number range you would like to print or enter the page number range you would like to print in the "Pages" box.
3. Click "Print." For more information, please visit the Microsoft Word printing support page.

CHECKLIST | COMPLYING WITH COBRA

Presented by Parrott Benefit Group

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires covered group health plans to offer continuation coverage to employees, spouses and dependent children when coverage would otherwise be lost due to certain specific events.

This checklist outlines key steps for administering COBRA coverage. Keep in mind that administering COBRA coverage can be complex and may involve additional steps depending on the details of specific situations. Also, many states have their own continuation coverage requirements for fully insured group health plans, which are often referred to as mini-COBRA laws. Employers will need to comply with COBRA and any applicable state continuation coverage laws.

General Requirements

General COBRA Compliance	Complete
Identify group health plans that are subject to COBRA. In general, COBRA applies to group health plans maintained by private-sector employers with **at least 20 employees** on more than 50% of typical business days in the previous calendar year. This includes, for example, fully insured health plans, self-insured health plans, level funded health plans, dental and vision plans, health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs) Note that COBRA does NOT apply to health plans maintained by small employers (fewer than 20 employees) or churches, although state continuation coverage requirements may apply to these plans.	☐
Download the Department of Labor's (DOL) model forms for administering COBRA or create your own versions of these forms. If you are using the DOL's model forms, confirm you are using the most up-to-date versions.	☐
Provide the COBRA General Notice to each covered employee (and spouse, if applicable) within 90 days after health plan coverage begins.	☐
Establish internal procedures for administering COBRA coverage, including procedures for Qualified Beneficiaries to provide COBRA notices and make premium payments.	☐
Provide Qualified Beneficiaries who are receiving COBRA coverage with the same benefits, choices and services that similarly situated participants receive, including the right to choose between coverage options during an open enrollment period.	☐
Create and maintain records related to COBRA compliance, including records of all COBRA-required notices.	☐

Administering COBRA

Basic Information		
Names of Qualified Beneficiaries		
Type of Qualifying Event	Termination of employment (18 months)	☐
	Reduction of hours (18 months)	☐
	Divorce or legal separation (36 months)	☐
	Employee's death (36 months)	☐
	Covered child's loss of eligibility (36 months)	☐
	Entitlement to Medicare (36 months)	☐
Date of Qualifying Event		
COBRA Start and End Dates		

COBRA Coverage	N/A	Yes/Complete	Date
Notice of Qualifying Event received from Qualified Beneficiary (if applicable) Qualified Beneficiaries are required to notify the plan when the Qualifying Event is a divorce or legal separation or a covered child's loss of eligibility.	☐	☐	
COBRA Election Notice sent to Qualified Beneficiary This notice must be provided within **14 days** of receiving notice of the Qualifying Event. For Qualifying Events that do not require notice from the Qualified Beneficiary (termination of employment, reduction in hours, employee's death or employee's entitlement to Medicare), the Election Notice generally must be provided within **44 days** of the date of the Qualifying Event or the date the Qualified Beneficiary would otherwise lose coverage, whichever is later.	☐	☐	
Notice of COBRA unavailability sent (when a request for COBRA coverage is denied)	☐	☐	

COBRA Coverage	N/A	Yes/Complete	Date
The notice must be provided within **14 days** after the request for COBRA continuation coverage is received, and it must explain the reason for denying the request.			
Completed COBRA Election Notice received from Qualified Beneficiary At a minimum, each Qualified Beneficiary must be given at least **60 days** to elect COBRA coverage.	☐	☐	
Initial COBRA premium received Qualified Beneficiaries cannot be required to pay a premium at the time they make the COBRA election. Plans must provide at least **45 days** after the election for an initial premium payment to be made.	☐	☐	
Establish deadline and grace period for subsequent premium payments Health plans may establish due dates for premiums after the initial premium payment. Plans must provide a minimum **30-day grace period** for each payment.	☐	☐	
Provide notice of premium shortfall (if applicable) A premium payment that is short by an insignificant amount will be deemed to satisfy the Qualified Beneficiary's payment obligation unless the plan notifies the Qualified Beneficiary of the shortfall and grants a reasonable amount of time to correct the deficiency. For this purpose, **30 days** after the notice is provided is considered a reasonable amount of time.	☐	☐	
Covered employee's Medicare entitlement before a Qualifying Event that is a termination of employment or reduction in hours and extension of COBRA coverage (if applicable) An employee's entitlement to Medicare can extend the maximum COBRA coverage period for covered spouses and dependents if the employee has a termination or reduction in hours within 18 months after becoming entitled to Medicare. Under this rule, covered spouses and dependents are entitled to COBRA coverage for the longer of the following: 18 months from the date of the employee's termination or reduction in	☐	☐	

COBRA Coverage	N/A	Yes/Complete	Date
hours; or 36 months from the date the employee became enrolled in Medicare.			
Notice of disability determination received and COBRA coverage extended (if applicable) Where the Qualifying Event is a termination of employment or a reduction in hours and a Qualified Beneficiary is determined by the Social Security Administration to be disabled before, at or within 60 days of the date of the Qualifying Event, all Qualified Beneficiaries within that family are entitled to COBRA for a maximum period of **29 months**. In general, the time limit for providing this notice cannot be shorter than **60 days**.	☐	☐	
Notice of second Qualifying Event received and COBRA coverage extended (if applicable) The maximum COBRA period may be extended for spouses and dependent children when a Qualifying Event that is a termination of a covered employee's employment or a reduction of hours (both of which trigger an 18-month maximum COBRA period) is followed by a second Qualifying Event that has a 36-month maximum coverage period. In general, the time limit for providing this notice cannot be shorter than **60 days**.	☐	☐	
Qualified Beneficiary begins coverage under another group health plan (or Medicare) after electing COBRA (if applicable) COBRA coverage may be terminated earlier than the end of the maximum coverage period if a Qualified Beneficiary obtains coverage under another group health plan or enrolls in Medicare after electing COBRA coverage.	☐	☐	
Notice of early termination of COBRA coverage sent (if applicable) When a group health plan terminates COBRA coverage early, the plan must give the Qualified Beneficiary a notice of early termination. The notice must be provided as soon as practicable following the decision to terminate coverage early.	☐	☐	

COBRA Coverage	N/A	Yes/Complete	Date
COBRA coverage exhausted (maximum coverage period expires) The maximum coverage period is 18, 29 or 36 months, depending on the Qualifying Event(s) and whether there is a disability determination. COBRA does not require the plan to notify the Qualified Beneficiary when the maximum coverage period is about to expire, although employers may decide to provide this notice to help Qualified Beneficiaries plan ahead.	☐	☐	

Use this checklist as a guide when reviewing your company's compliance with COBRA. For assistance, contact Parrott Benefit Group.

COBRA Continuation Coverage Overview

The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows individuals to continue their group health plan coverage in certain situations. COBRA requires covered group health plans to offer continuation coverage to employees, spouses and dependent children when coverage would otherwise be lost due to certain events. COBRA sets rules for how and when continuation coverage must be offered and provided, how employees and their families may elect continuation coverage and when continuation coverage may be terminated.

This infographic provides an overview of COBRA. This overview is not exhaustive and employers should seek local legal counsel for specific guidance.

When Does COBRA Apply?

COBRA generally applies to group health plans maintained by private-sector employers that have **20 or more employees.** A group health plan is any arrangement that an employer establishes or maintains to provide employees or their families with medical care.

Type of Benefit	Subject to COBRA? Yes	No
Group medical plans	✓	
Dental and vision plans	✓	
Health FSAs and HRAs	✓	
HSAs		✓
Disease-specific policies (providing medical care)	✓	
Group life insurance		✓
Disability plans (long- and short-term)		✓
AD&D Coverage		✓

Who Is Entitled to COBRA Coverage?

A group health plan is required to offer COBRA continuation coverage only to qualified beneficiaries and only after a qualifying event has occurred.

Qualified Beneficiaries

A qualified beneficiary is an individual who was covered by a group health plan on the day before a qualifying event occurred. This may include **employees**, employees' **spouses** or **former spouses**, or employees' **dependent children.**

Qualifying Events

Qualifying events include:

- **Termination of employment**
- **Reduction of hours**
- **Divorce or legal separation**
- **Covered employee's death**
- **Child's loss of dependent status**
- **Covered employee's entitlement to Medicare**

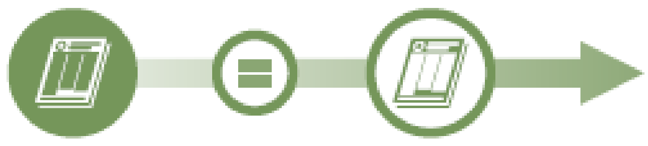
How Long Does COBRA Coverage Last?

COBRA requires that continuation coverage extend from the date of the qualifying event for a period of **18 or 36 months**, depending on the type of qualifying event. Coverage can be extended beyond the maximum period for disability or a second qualifying event.

COBRA continuation coverage may terminate before the end of the maximum coverage period for certain reasons, such as when premiums are not fully paid on a timely basis or a qualified beneficiary begins coverage under another group health plan or becomes entitled to Medicare benefits after electing COBRA.

If continuation coverage is terminated early, the plan must provide the qualified beneficiary with an early termination notice.

What Benefits Must Be Offered?



Qualified beneficiaries must be offered coverage identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan.

Who Pays for COBRA Coverage?

Group health plans can require qualified beneficiaries to pay for COBRA continuation coverage. The maximum amount charged to qualified beneficiaries cannot exceed **102%** of the plan's cost for similarly situated individuals. If COBRA coverage is extended due to disability, the maximum amount charged during the disability extension cannot exceed 150% of the plan's cost.

Qualified beneficiaries must be provided with **at least 45 days** to make an initial premium payment after making their COBRA elections. If a qualified beneficiary fails to make any payment before the end of the initial 45-day period, the plan can terminate the qualified beneficiary's COBRA rights. The plan sponsor can establish due dates for premiums for subsequent periods of coverage, but it must provide a minimum **30-day grace period** for each payment.

What Notices Must Be Provided?

The following COBRA notices must be provided:

- **General (or initial) notice**—must be provided **within 90 days** of when health plan coverage begins
- **Election notice**—must be provided to qualified beneficiaries after a qualifying event
- **Notice of unavailability of COBRA coverage**—must be provided after a group health plan denies a request or extension for COBRA coverage
- **Notice of early termination of COBRA coverage**—must be provided when COBRA coverage terminates early

What Are the Rules for Electing COBRA?

COBRA requires group health plans to provide qualified beneficiaries with an election period during which they can decide whether to elect continuation coverage. Each qualified beneficiary must be given **at least 60 days** to decide. Note that due to the COVID-19 pandemic, certain deadlines for electing COBRA coverage and paying COBRA premiums have been extended. These extensions are scheduled to end on July 10, 2023.\

Visit the U.S. Department of Labor's website for more information about COBRA.

Source: U.S. Department of Labor

HR Insights

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COBRA Administration Outsourcing

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that provides for the temporary extension of employer-sponsored group health coverage for employees and their family members (qualified beneficiaries) in certain situations. COBRA coverage is available when qualifying events occur, such as termination of employment or divorce.

Due to the complexities of the law and potentially serious consequences for mistakes or violations, many employers outsource COBRA administration to a third-party administrator (TPA).

Reasons to Outsource COBRA Administration

COBRA's complex rules and requirements, mandatory notices and multiple deadlines can be difficult to follow and administer, whether you are a large company and have many qualifying events to keep track of, or you are a small organization that rarely has to deal with COBRA.

Here's why many companies outsource COBRA administration and why you might consider finding a TPA to handle your COBRA obligations:

- **It's complicated**. COBRA typically applies to employers with 20 or more employees, although how that number of employees is defined can be complicated if you have fluctuations of employee numbers throughout the year or numerous part-time employees. If your company is subject to COBRA, understanding and keeping track of the various requirements can be difficult. You will need to correctly administer things like required notices, election and payment deadlines, late and partial payments, different coverage periods, changes to plan options, address changes and terminations of coverage.
- **It can be costly**. Both the Internal Revenue Service (IRS) and U.S. Department of Labor (DOL) oversee COBRA-related laws. Both the IRS and DOL can levy fines and taxes, including fines of $110 per day just for the failure to properly issue COBRA notices and requested documents. The risk of missing a deadline for a notice or disclosure is high, especially if you don't deal with COBRA frequently. In addition, you run the risk of individuals suing you for COBRA mistakes. Employers whodo not administer COBRA coverage correctly can also be held responsible for paying individual health claims for qualified beneficiaries.
- **It's time-consuming**. The knowledge and expertise needed to properly administer COBRA requires extensive training. Combined with the time expended by internal HR employees to actually administer COBRA, the amount of training necessary is often disproportionate to the number of qualifying events. COBRA administration can be stressful and time-consuming, and dealing with COBRA in-house is often an inefficient use of HR's

time and resources. On the other hand,

if your company experiences high employee turnover or numerous qualifying events, you could be overwhelmed by the amount of work required by COBRA, taking away valuable time from other essential duties.

Due to the complexity of COBRA, the high risk of fines, taxes and lawsuits, and the inefficient use of HR's time and effort, COBRA administration is a prime candidate for outsourcing.

Considerations When Choosing a COBRA Administrator

If you do choose to outsource COBRA administration to a TPA, you will want to consider a few qualities as you choose a TPA:

- **Compliance expertise**—COBRA compliance depends on the prompt implementation of federal guidelines and regulations that stipulate what needs to be done and when it must be completed. Check that your TPA is well-respected for its expertise, follows written procedures and includes independent monitoring to ensure full compliance with COBRA regulations.
- **Technological advancement**—Generally, you will want to find an organization that is well-equipped with technology to handle on-time electronic delivery of all the required notices and letters. A good technological system will streamline the COBRA compliance process and provide proof that all deadlines were met. In addition, the system should be secure and encrypted to protect the privacy of information.
- **Customer service competence**—Assessing the TPA's level of customer service is also important. Having a good TPA can protect your company from having to deal with disgruntled ex-employees. Also, good customer service from your TPA will reduce the incidence of employee complaints about how COBRA is being handled.
- **Legal accountability**—Another important consideration is the indemnification protections provided in the contract. Although a TPA will never be able to take on all legal risk of COBRA administration, it should stipulate in the contract that the TPA takes financial responsibility for its own mistakes. Of course, if you fail to notify them when an employee is terminated or reports another qualifying event, you will be responsible for COBRA noncompliance, but a good TPA will relieve you of at least some of the risks associated with COBRA.

Logistics of COBRA Outsourcing

After you have decided to outsource COBRA administration and have chosen a TPA, you will enter into a contract with them. As mentioned above, it is extremely important to review the indemnification process and make sure your company is protected from the TPA's mistakes. After all, this is probably one of the main reasons you are outsourcing COBRA administration—to cut down on the financial risk resulting from any mistakes.

Although many TPAs are similarly priced, there are often two choices for how you can pay fees. Typically, you will either pay a flat fee per qualifying event or a monthly fee per eligible employee. Companies with low turnover will likely prefer the fee per qualifying event, whereas you might choose the monthly fee per eligible employee if you have high turnover or want to predict your COBRA administration-related spending more closely.

When outsourcing COBRA administration, you will also need to designate someone to serve as a liaison between your company and the TPA. This person will ensure that all qualifying events are communicated to the TPA, field any complaints about the TPA from COBRA-qualified employees, and address any other concerns or communication regarding COBRA administration.

For more information on COBRA administration, contact Parrott Benefit Group today.