An Employer's Guide to COBRA

October 2023

Benefits & Human Resources Consulting

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PLEASE NOTE

As your insurance consultant, we have prepared this guide to provide you with general information on COBRA. We have not attempted to address all issues pertaining to COBRA. We have summarized and provided ‘our’ interpretation of selected information that, in our opinion, is crucial to understanding and administering COBRA. Third party administrators (“TPA”) and insurance carriers administer COBRA according to their own interpretations. Therefore, you should consult with your own insurance carrier or TPA and refer to the complete text in the statutes, legislative history, regulations, court cases, and other announcements for amendments and updates.

This guide is for informational purposes only, and should not be construed as legal advice or legally binding. Please consult your legal counsel if you require a binding opinion on any specific COBRA matter.

This guide is updated from time to time to reflect changes in COBRA administration. Please contact your Gallagher. consultant team to determine if you have the most current version of these materials.

DATE OF THIS REVISION: August 1, 2023

A. BACKGROUND

1. COBRA

"COBRA" refers to Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985. (Public Law 99-272). COBRA amended the Internal Revenue Code (Code), the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHSA). The Code's COBRA provisions are found in Section 4980(B). ERISA's COBRA provisions are found in ERISA §§601-608. The PHSA's COBRA provisions are found in PHSA §§2201-2208 and apply to group health plans maintained by any State or its political subdivision, agency or instrumentality.

2. Why Do We Have It?

The goal of COBRA is to provide temporary continued health care coverage to former employees, spouses and dependents at group rates, in instances where coverage under the plan would otherwise end.

3. Effective Date

For most group health plans, COBRA became effective for plan years beginning on or after July 1986. Employers with collectively bargained plans had to comply with COBRA for plan years beginning on or after January 1, 1987, or the date on which the last collective bargaining agreement relating to the plan terminated.

4. Regulations

The COBRA Conference Report authorized the Department of Labor (DOL) to issue regulations implementing the notice requirements and the IRS to issue regulationsdefining required COBRA coverage and sanctions. The Department of Health and HumanServices (DHHS) is to issue regulations for State and local governments to provide COBRA coverage.

a. IRS Regulations

i. Former Proposed Regulations. The IRS has issued three sets of proposed regulations. The first set was issued on June 15, 1987. These were eventually finalized in 1999. The IRS proposed the second set of regulations on January 7, 1998. The second set addressed changes made by HIPAA (Health Insurance Portability and Accountability Act of 1996) and the disability extension. The third set was issued February 3, 1999. All of the proposed regulations are now replaced by the final regulations of 1999 and 2001 (see below).

ii. 1999 Final Regulations. The IRS issued final regulations on February 3, 1999 in the form of 41 questions and answers interpreting the COBRA provisions of the Code. The final regulations do not cover notice procedures or premium calculation. The final regulations are effective for

qualifying events occurring in plan years that begin on or after January 1, 2000.

iii. 2001 Final Regulations. On January 10, 2001, the IRS issued a second set of final regulations that add to and modify the 1999 final regulations. The 2001 final regulations apply to qualifying events occurring on or after January 1, 2002, except as otherwise noted in the text.

b. DOL Regulations

The DOL issued final COBRA notice regulations on May 26, 2004. The IRS regulations do not cover COBRA's notice requirements, which are theresponsibility of the DOL. These new regulations took effect for notice obligationsthat occur for plan years starting on or after November 26, 2004. They include a Model General Notice (formerly the Initial Notice), and a Model Election Notice. The DOL model initial notice released in ERISA Technical Release No. 86-2, in June 1986, should no longer be used. The DOL does not consider the old model initial notice to be in good faith compliance with COBRA's initial notice requirements.

c. Department of Health and Human Services Regulations

The DHHS has not issued any COBRA regulations. The DHHS generally relies on the IRS proposed regulations to interpret PHSA's COBRA provisions.

5. Amendments to COBRA

COBRA now consists of several different pieces of legislation due to amendments made since 1985 to Title X. COBRA amendments have extended coverage to bankruptcy proceedings; federal workers and employees on military leave; changed the tax sanctions; and made various other technical and substantive changes to many of the COBRA rules. The most recent amendments have been through the Small Business Job Protection Act of 1996 (SBJPA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Trade Act of 2002, the American Recovery and Reinvestment Act of2009 (ARRA), and the most recent American Rescue Plan Act of 2021 (ARPA).

a. Small Business Job Protection Act of 1996

SBJPA enacted a clarification of the rules that apply when Medicare entitlement precedes a termination or reduction in hours of employment.

b. Health Insurance Portability and Accountability Act of 1996

HIPAA enacted many changes affecting group health plans, including limits on the application of preexisting condition rules. The law also enacted several changes to COBRA.

c. Trade Act of 2002 – Health Care Tax Credit (HCTC)

The Trade Act expands benefits to workers displaced by import competition or shifts in production to other countries. The expansion includes a COBRA health care tax credit and a second COBRA election period.

The HCTC program expired on December 31, 2013, but on July 6, 2015, the Trade Preferences Extension Act of 2015 was enacted. It retroactively reinstated the HCTC program and extended it through December 31, 2019.

d. American Recovery and Reinvestment Act of 2009 (ARRA)

ARRA provided a temporary 65% subsidy of COBRA premiums for certain involuntarily terminated employees and their families who elected COBRA coverage. The eligibility period for the ARRA COBRA subsidy expired on May 31, 2010.

e. 2010 Fiscal Year Department of Defense Act

The 2010 DOD Act extended the eligibility period for the ARRA COBRA subsidy for an additional two months (through Feb. 28, 2010) and the maximum period for receiving the subsidy for an additional six months (from nine to 15 months) for most assistance eligible individuals.

f. Temporary Extension Act of 2010

The Temporary Extension Act of 2010 extended the eligibility period for the ARRA COBRA subsidy for an additional month (through March 31, 2010). The law also amended ARRA to add a new qualifying event and eligibility for the subsidy for certain individuals who lost group health plan coverage due to a reduction in hours from September 1, 2008 through March 31, 2010 and who were subsequently involuntarily terminated on or after March 2, 2010 but before April 1, 2010.

g. Continuing Extension Act of 2010

The Continuing Extension Act of 2010 extended the eligibility period for the ARRA COBRA subsidy for an additional two months through May 31, 2010.

The eligibility period for the ARRA COBRA subsidy expired on May 31, 2010. Individuals who experienced an involuntary termination of employment on or after June 1, 2010 are not eligible for the ARRA COBRA subsidy. Individuals who qualified for the COBRA premium reduction on or before May 31, 2010 could continue to pay reduced premiums for up to 15 months, as long as they were not eligible for another group health plan or Medicare.

h. Omnibus Trade Act of 2010

The Omnibus Trade Act of 2010 temporarily extended the 2002 Trade Act's

COBRA premium assistance program. The extension applied from January 1, 2011, when it was due to expire, through February 12, 2011 and temporarily extended the ARRA increase (ARRA increased the Health Coverage Tax Credit percentage to 80% from 65%). The increase to the amount of the tax credit was not extended further and has now expired. Effective February 15, 2011, the percentage of Health Coverage Tax Credit reverted to 65%.

i. American Rescue Plan Act of 2021

The American Rescue Plan Act of 2021 provides a temporary 100% COBRA subsidy for certain employees whose COBRA qualifying event was a reduction in hours or an involuntary termination of employment. The eligibility period for the ARPA COBRA subsidies is April 1, 2021 through September 30, 2021.

B. WHO MUST COMPLY?

1. Employers Affected By COBRA

a. General Rule

i. Nearly all employers with group health plans who had 20 or more employees employed, not just covered under the group health plans, on at least half of the typical business days during the preceding calendar year must comply with COBRA.

ii. Exceeding the 20-employee requirement. If any employer exceeds 20 employees during a calendar year, then the group health plan becomes subject to COBRA on the following first day of January.

iii. Dropping below the 20-employee requirement. If an employer drops below 20 employees during a calendar year, the employer will need to continue to offer COBRA through the end of that calendar year. However, an employer cannot terminate existing COBRA coverage even after the end of the calendar year.

b. Who Must Be Counted

All common-law employees must be counted regardless of their eligibility or participation for the group health plan. This includes all union employees and full-time and part-time employees. Owners and partners of an LLC or LLP must also be counted.

If two or more companies are commonly owned by an individual or individuals (such as parent/subsidiary, brother/sister or controlled groups of corporations), then the employees of all companies, including those outside the U.S., have to be counted together for purposes of satisfying COBRA's 20-employee requirement. The rules governing related employers are quite complex. Employers should seek legal counsel for specific situations.

Example: If an employer has a parent company with 100 employees, and the subsidiary is a smaller company with only five employees, then both companies would be subject to COBRA.

c. Who Should Not Be Counted

Self employed individuals who do not otherwise provide services to a corporation as an employee should not be counted, including sole proprietors, partners in a partnership, more than 2% shareholders in a C Corporation, independent contractors, and directors of a corporation.

d. Part-Time Employees

A part-time employee counts as a fraction of an employee. The fraction equals the number of hours worked by the part-time employee divided by the number of hours worked by a full-time employee (not more than 8 hours a day or 40 hours a week). The employees can be counted for each business day or the total employees for a pay period can be attributed to each day in that pay period.

e. Exceptions to COBRA

i. **Small Employer Plan.** Employers that had fewer than 20 employees on at least half of the typical business days during the preceding calendar year are not subject to COBRA.

ii. **Federal Government Group Health Plan.** The federal government has its own rules regarding continuation of coverage and therefore is not subject to COBRA.

iii. **Church Plans.** Church plans within the meaning of Section 414(e) of the Internal Revenue Code are not subject to COBRA.

f. Nice Guy Caution

COBRA imposes minimum obligations on employers, but employers can always offer more than COBRA regulations require (i.e., better coverage, coverage for a longer time period or coverage to eligible individuals not entitled to COBRA coverage.) The caution in this instance is that although the employer may want to be a nice guy they should make certain that the insurance carrier agrees to pay claims for such additional coverage.

2. Group Health Plans

An employer with 20 or more employees that sponsors a group health plan must comply with COBRA. A group health plan is defined as *"a plan maintained by an employer or employee organization to provide health care...to individuals who have an employment-related connection to the employer or to the employee organization or to their families."*

a. "Maintained" by the Employer

Ordinarily, for an employer to maintain a plan, the employer must contribute to the premium or have some significant active involvement in its administration.

However, an employer does not have to contribute to the premium for the plan to be "maintained" by that employer. The key is whether coverage under the plan would be available at the same cost to the employee if he or she obtained the coverage on their own.

b. Medical Care

"Health care" means the same as "medical care" as defined in Code Section 213(d) as the "diagnosis, cure, mitigation, treatment or prevention of disease, and any undertaking for the purpose of affecting any structure or function of the body. . . It does not include anything merely beneficial to the general health of an individual, such as a vacation. (The IRS COBRA regulations definition of "health care" is found in Treasury Regulation §54.4980 B-2, Q/A-1.)

c. Examples

i. Group Health Plans (subject to COBRA)

- Health Insurance Plans
- HMO Plans
- Self-funded Health Plans
- Dental Plans
- Vision Plans
- Prescription Drug Plans
- Medical Reimbursement Plans (MERP) and Health Flexible Spending Arrangements under IRC Section 125.
- Health Reimbursement Arrangements (HRAs)
- Employee Assistance Plans. Keeping in mind that a group health plan must provide "medical care," these are subject to COBRA if they are staffed by trained counselors who provide counseling and not just referrals.
- On-Site Medical Facilities. An on-site medical facility that renders medical care beyond minor first aid for illness and injuries incurred during working hours.

ii. Non-Group Health Plans (not subject to COBRA)

- Group Term Life Insurance Plans
- Accidental Death & Dismemberment Plans
- Short and Long Term Disability Plans
- Exercise or Fitness Plans
- On-Site Medical Facilities. A free on-site medical facility that renders first aid only during working hours to current employees does not constitute a group health plan.
- Long Term Care Plans (As stated in HIPAA.)

- Medical Savings Accounts (As stated in HIPAA.)
- Health Savings Accounts

iii. Exception for Certain Health FSA Plans and Medical Reimbursement Plans. The 2001 final regulations allow limited rights to COBRA for certain health FSA plans. Generally, Health FSA plans that meet certain conditions only have to offer COBRA to those qualified beneficiaries who have under spent their accounts on the qualifying event date. For those participants who elect COBRA for their Health FSA under these limitations, COBRA can be cut-off at the end of the plan year in which the qualifying event occurred. The rules surrounding this exception are detailed and are outside the scope of these materials. Employers should discuss this exception with the third party administrator of their health FSA plan or their counsel.

C. WHO MUST BE OFFERED COBRA?

Once it is determined that an employer is subject to the COBRA regulations, the employer is required to offer continuation coverage under COBRA to qualified beneficiaries.

1. Qualified Beneficiaries

A qualified beneficiary must be enrolled in the employer's group health plan on the day before the qualifying event takes place. The following individuals can be qualified beneficiaries:

a. A Covered Employee

COBRA defines a covered employee as an individual who is provided coverage under a group health plan as a result of "the performance of services by the individual for one or more persons maintaining the plan (including an employee defined in 401(c)(1) of the Internal Revenue Code)." In addition to employees, retirees, and partners, a covered employee includes agents, independent contractors, self-employed persons, and corporate directors, if they are covered by the plan.

b. A Covered Spouse of a Covered Employee

c. A Covered Same-Sex Spouse of a Covered Employee

A same-sex spouse that is covered under an employer-sponsored group health plan. For purposes of this Guide, the use of the term "spouse" is intended to include both opposite-sex spouses and same-sex spouses.

d. A Covered Dependent Child of a Covered Employee

e. A Newborn or Adopted Child

The employer is required to make coverage available to a qualified beneficiary's newborn or adopted child. Children born to or placed for adoption with, a covered employee while the covered employee is on COBRA, are added under the Plan's rules for adding dependents and the added children must be treated as qualified beneficiaries.

f. A Child of a Domestic Partner or Same-Sex spouse

COBRA does not define the term "dependent children" so the plan must rely on its own definition of the employee's dependents to determine who is a qualified beneficiary. If a group health plan provides coverage to a domestic partner's or same-sex spouse's children as dependents of the employee, then those children will be COBRA qualified beneficiaries and will have independent election rights.

2. Exceptions

- Non-Resident Aliens Having no U.S. Source of Income
- New Spouse or Dependents Added Due to a Marriage

The employer is required to make coverage available to a qualified beneficiary's new spouse or dependent children under a HIPAA special enrollment on the same terms and conditions as an active employee. However, a spouse or child added due to a marriage will not be considered a qualified beneficiary because they were not covered by the group health plan on the day before the qualifying event. This means that they cannot continue COBRA coverage if the qualified beneficiary's coverage terminates and they cannot extend their COBRA coverage due to a second qualifying event.

a. Spouse or Dependents Added During Open Enrollment

The employer is required to make coverage available to a qualified beneficiary's spouse or dependent children during open enrollment on the same terms and conditions as an active employee. However, a spouse or child added during open enrollment will not be considered a qualified beneficiary. This means that they cannot continue COBRA coverage if the qualified beneficiary's coverage terminates and they cannot extend their COBRA coverage due to a second qualifying event.

b. Domestic Partner

Because a domestic partner is not a *spouse* under Federal law, they are not a qualified beneficiary. However, if an employee in a domestic partnership experiences a COBRA qualifying event that is a termination of employment or a reduction in hours, the employee must be allowed to elect COBRA coverage that

is identical to the coverage that was in effect on the day before the qualifying event, including coverage for the domestic partner even though the domestic partner would not be a qualified beneficiary in their own right.

In cases where active employees are permitted to add a new domestic partner to coverage or add a domestic partner at open enrollment, arguably COBRA qualified beneficiaries must be permitted to enroll a domestic partner.

D. WHEN MUST COBRA BE OFFERED?

1. Qualifying Event

Employers are required to offer COBRA coverage to qualified beneficiaries when there is a loss of coverage caused by one of the following events:

- Termination of employment
- Reduction in hours of employment
- Death of a covered employee
- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Medicare entitlement for covered employee
- Employer bankruptcy

2. Details of Specific Events

a. Termination of Employment

i. **Voluntary.** When a covered employee voluntarily terminates his or her employment, including by retirement, the employee may choose to continue coverage under the employer's group health plan through COBRA.

ii. **Involuntary.** When a covered employee is involuntarily terminated from his or her employment, other than for gross misconduct, the employee may choose to continue coverage under the employer's group health plan through COBRA.

Exception for Gross Misconduct: COBRA does not require that continuation coverage be offered to an employee who is terminated due to gross misconduct. However, COBRA does not define what constitutes "gross misconduct." Case law has established a loose standard that requires conduct that is directly work-related and is so outrageous it shocks the conscience. If the conduct is off-work, then there must be a "substantial nexus" to the workplace before itis gross misconduct. It may be better to offer COBRA coverage than

try to determine if the employee's actions constitute gross misconduct. An employer should always seek legal advice before denying COBRA coverage for gross misconduct purposes. The plan administrator always risks suit and $110 per day penalties for failure to offer coverage in this situation.

iii. In Anticipation of Termination. Employers are specifically prohibited from canceling an employee's coverage in anticipation of a qualifying event so that COBRA coverage does not have to be offered.

b. Reduction in Hours

When a covered employee has a reduction in hours due to a change from full-time to part-time employment, lay-offs, strikes, or a leave of absence, the employee may choose to continue coverage under the employer's group health plan through COBRA.

i. Non-FMLA Leave of Absence. When a covered employee reduces his or her hours due to a leave of absence not taken under the Family and Medical Leave Act, the employer may choose whether the qualifying event occurs at the beginning or end of the leave.

Example: On July 1, 2015, Lucy Lost takes a leave of absence from The Nowhere Company to travel through Europe and "find herself." The Nowhere Company agrees to pay for 3 months of coverage on the group health plan (they appreciate "found" employees). At the end of the 3-month leave of absence, Lucy has "found" herself someplace other than The Nowhere Company, and her coverage ceases. A qualifying event has occurred, but the question is when did the loss of coverage occur? Was it at the beginning or end of the leave?

Before this question can be answered, The Nowhere Company should consult with its insurance carrier, if coverage is under an insured plan, as to how the leave will be administered under the insurance contract. In this example, The Nowhere Company's insurance carrier treated the start of Lucy's leave of absence as the qualifying event and would not allow Lucy coverage for the 3-month leave of absence, in addition to 18 months of COBRA coverage. The contract required that the COBRA notice be given to Lucy at the beginning of her leave of absence in case she "found" herself somewhere else and did not return. This means that Lucy's 18 months of COBRA coverage began July 1, 2015.

It is important to note that employers should have a policy in place

to deal with COBRA issues surrounding a leave of absence. The above example points this out since The Nowhere Company could have been in conflict with their insurance contract if the COBRA notice had not been given at the beginning of the leave.

ii. FMLA Leave of Absence. The Family and Medical Leave Act of 1993 ("FMLA") requires employers with 50 or more employees to provide employees with up to 12 weeks of unpaid leave per year in the case of birth or adoption of a child, to care for a spouse, child or parent with a serious medical condition, because of an employee's own serious medical condition, or "any qualifying exigency" during a family member's active military service, or a family member being called to active military duty. Up to 26 weeks of leave must be provided to eligible employees to care for a member of the Armed Forces who is undergoing treatment, recuperation, or therapy for a serious health injury or illness suffered while on active duty.

iii. The FMLA also requires employers to continue to pay for health benefits while employees are on FMLA leave.

A qualifying event occurs when the employee is covered on the day before the start of the FMLA leave (or becomes eligible for coverage while on FMLA leave); the employee fails to return to work at the end of the FMLA leave; and the employee loses coverage.

The COBRA coverage begins on the last day of the FMLA leave or the later coverage loss date. If the employee notifies the employer that he or she is not returning to work, then the last day of FMLA leave is that notice date.

If the employee fails to pay his or her portion of premiums while on FMLA leave, the qualifying event is still the end of the leave. The employee is allowed to continue coverage that has already been lost.

As in all cases, you should consult with your legal counsel and insurance company on any specific factual situations.

(FMLA is outside the scope of this COBRA guide. If you have questions on FMLA and how it relates to your benefit plans, please contact your Gallagher Benefit Services consulting team.)

iv. Coordination with the "look-back" method under the ACA's employer mandate.

When an employee experiences a reduction in hours, the employer must determine if a qualifying event has occurred and when the COBRA

coverage period should start. Generally, the answer to these questions will depend on whether the employee remains eligible for coverage under the terms of the plan after the reduction in hours.

Employers that are using the look-back method to identify full-time employees, but not to determine plan eligibility. If the employee loses eligibility as a result of a reduction in hours, then the employer would terminate coverage and offer COBRA. But because the employee is still treated under the look-back method as a full-time employee for the remainder of the stability period, the employer could still be penalized for those remaining months under the Code §4980H(b) employer mandate penalty. As a result, the employer should consider offering COBRA that is "affordable" until the end of the stability period. The COBRA coverage period could be measured from the later of the qualifying event date (reduction in hours) or the date coverage is lost.

Employers that are using the look-back method to determine plan eligibility. Generally, if a full-time employee has a reduction in hours during a stability period, he or she continues to be treated as an eligible full-time employee for the remainder of that stability period. If the employee remains covered during that stability period, he or she will not have a loss of coverage/qualifying event until the end of the stability period (or in some cases, until the end of the next stability period). If the employee remains covered for the duration of the stability period, then the qualifying event will typically occur at the end of that stability period when coverage is lost. COBRA should then be offered at that time. The COBRA coverage period could be measured from the later of the qualifying event date (reduction in hours) or the date coverage is lost. **Note:** Under the COBRA regulations, the COBRA coverage period can be measured from either the date of the reduction in hours or from the date of the loss of coverage. However, when the reduction in hours occurs, the employer may not know when coverage will end. It could be at the end of the current stability period, or the employee could qualify again as a full-time employee for another stability period in which case coverage would have to be offered for another 12 months. As a result, the easiest method may be to measure the COBRA coverage period from the date coverage is lost.

Employee loses full-time employee status under a measurement period. If a current full-time employee loses eligibility due to not working enough hours in a measurement period, and that causes a loss of coverage at the end of the current stability period, then a qualifying event has occurred as a result of the reduction in hours. The qualifying event

date would be the last day of the measurement period. The COBRA coverage period can be measured from either the date of the reduction in hours (i.e. the last day of the measurement period) or from the date of the loss of coverage, which is the last day of the current stability period.

c. Death of a Covered Employee

i. When a covered employee dies, the covered spouse and covered dependent children of that employee are considered to be qualified beneficiaries and may choose to continue coverage under the employer's group health plan through COBRA.

d. Divorce or Legal Separation

i. When a covered employee receives a court decree of legal separation or divorce, the covered spouse and covered dependent children are considered to be qualified beneficiaries and may choose to continue coverage under the employer's group health plan through COBRA. It is important to note that the filing for divorce or legal separation does not constitute a qualifying event.

ii. Notification. It is the responsibility of the covered employee and qualified beneficiaries to notify the employer within 60 days after the divorce or legal separation becomes final, or within 60 days from the date coverage would be lost (whichever is later). Notification from the covered employee or qualified beneficiary is acceptable for all qualified beneficiaries that are affected. The employer is not required to offer COBRA coverage if notice is not given.

iii. Caution. A common situation that arises is when the covered employee wants to drop the group health coverage of his or her spouse in anticipation of a divorce or legal separation so that the spouse will not be considered a qualified beneficiary eligible for COBRA coverage. If the spouse's coverage is lost in anticipation of a divorce or legal separation, the right to COBRA coverage begins on the date of the divorce or legal separation, not on the earlier loss-of-coverage date. This may cause a gap in coverage. One way to avoid this gap in coverage is for the employer to require spousal consent or to notify the spouse of the drop in coverage.

e. Dependent Child Ceasing to be a Dependent

i. When a covered dependent child ceases to be a dependent of the covered employee (i.e., under the definition within the insurance contract or policy) that child is considered to be a qualified beneficiary and may choose to continue coverage under the employer's group health plan

through COBRA.

ii. Notification. It is the responsibility of the covered employee or qualified beneficiary to notify the employer within 60 days after the dependent child ceases to be a dependent or within 60 days from the date coverage would be lost (whichever is later). The employer is not required to offer COBRA coverage if notice is not given.

f. Medicare Entitlement

A covered employee's entitlement to Medicare is never a qualifying event for that employee. The qualifying event occurs for the covered spouse and dependents. To cause there to be a qualifying event, the insurance contract or policy would need to exclude the covered spouse or dependent from coverage at the time the employee is entitled to Medicare. This is not allowed under the current Medicare statutory rules.

i. Eligible vs. Entitled. Reaching age 65 is not automatically a qualifying event. There is an important distinction between a person being "entitled to" or "eligible for" Medicare. A person is generally eligible for Medicare when he or she reaches age 65 and is qualified to receive Social Security benefits. However, to be entitled to Medicare, a person must actually apply for Social Security benefits.

ii. Entitlement before a Qualifying Event. When an employee already entitled to Medicare has a qualifying event (i.e., termination of employment or reduction in hours), then his or her dependents are allowed either 18 months from the qualifying event, or 36 months from the earlier Medicare entitlement, whichever is longer.

Example: Fred reached age 65 and became entitled to Medicare on July 1, 2015. Fred retires on July 1, 2016. Fred is entitled to 18 months of COBRA coverage from his retirement date. Fred's spouse was covered when Fred retired and would also be eligible to elect COBRA coverage. Her COBRA coverage would either expire on the later of December 31, 2017 (18 months from the qualifying event) or June 30, 2018 (36 months from Fred's Medicare entitlement date).

g. Employer Bankruptcy

i. When a covered retiree, and/or spouse or dependents, lose coverage due to an employer's Chapter 11 bankruptcy, they may choose to continue coverage under the employer's group health plan through COBRA. For further details on COBRA in a bankruptcy setting, an employer should consult with legal counsel. Note: this rule does not apply to non-federal governmental employers. Chapter 11 bankruptcy does not

apply to non-federal governmental entities.

3. The Uniformed Services Employment and Re-employment Rights Act of 1994 ("USERRA")

a. Background

USERRA creates health plan continuation coverage rights for employees (and their dependents) who are absent from work for military service. Both COBRA and USERRA may apply in this situation. Under COBRA, the loss of group health plan coverage due to a covered employee's leaving employment for military service is a qualifying event. When both USERRA and COBRA apply, the COBRA maximum coverage period is not extended. The coverage runs concurrently.

b. No Exception for Small Employers

There is no exception under USERRA for small employers. Employers with less than 20 employees must offer USERRA coverage to the employees and dependents.

c. Requirements

i. An employee who is absent from work due to uniformed service may elect to continue coverage for himself and covered dependents under any group health plan. The definition of "group health plan" mirrors the COBRA definition.

ii. The employee may be required to pay the premium plus a 2% administrative fee. However, if the employee is absent due to uniformed services for less than 31 days, then the employer can only charge the active employee share of the premium.

iii. The maximum coverage period is 24 months from the date the absence begins or for the period of service, whichever period is shorter. (The coverage period was raised from 18 months, effective with elections after Dec. 10, 2004)

iv. USERRA coverage can only be terminated before the 24 months ends if the employee fails to apply for or return to employment at the end of the uniformed service. An individual can also lose his or her rights under USERRA, including continuation of coverage, if the individual is court-martialed or has a dishonorable discharge.

v. There is no stated election procedure like COBRA.

vi. Dependents do not have an independent right to elect USERRA coverage. The employee must elect the USERRA coverage as well.

vii. USERRA does not state when the premiums are due.

viii. USERRA has no COBRA-like notice requirements. Effective January 20, 2006, employers must post a DOL form of notice of rights and benefits under USERRA.

ix. There is no additional extension of the 24-month coverage period.

d. COBRA v. USERRA

When COBRA and USERRA vary, the employee (and dependent) is entitled to protection under whichever law gives him or her greater benefit.

4. Trade Act of 2002 – Health Care Tax Credit (HCTC)

a. Background

The Trade Act of 1974 provided trade adjustment assistance ("TAA") for workers displaced by import competition or shifts in production to other countries. There is a certification process workers must complete to receive TAA. The Trade Act of 2002 expands the benefits provided to certified TAA workers.

The HCTC program expired on December 31, 2013, but on July 6, 2015, the Trade Preferences Extension Act of 2015 was enacted. It retroactively reinstated the HCTC program and extended it through December 31, 2019.

b. Tax Credit

Starting in December 2002, workers who receive TAA may also receive a tax credit for 65% of the worker's and family's premiums paid for certain types of medical coverage (including COBRA premiums). The Trade Adjustment Assistance Extension Act of 2011 increased the tax credit from 65% to 72.5% for eligible coverage months beginning after February 12, 2011. The Trade Preferences Extension Act of 2015 maintains the 72.5% subsidy.

i. TAA eligibility. The taxpayer must be an eligible individual paying premiums for qualified health coverage without any other coverage.

ii. Eligible Coverage. The qualified health insurance includes medical, prescription drugs and employee assistance plans. It does not include HIPAA-limited scope dental and vision plans or health FSAs under a Section 125 plan.

iii. Advance Tax Credit. No later than August 1, 2003, a program must be set up to allow the government to make premium payments directly to the insurer in the amount of the tax credit.

c. Grants

Workers who receive TAA are also eligible for grants to state programs which help obtain medical coverage (including COBRA).

d. Second Election Period

Effective for TAA petitions filed on or after November 4, 2002, workers who receive TAA are eligible for a second 60-day election period after certification for TAA. However, the election must be made within 6 months after the initial loss of coverage.

i. Spouses and Dependents. The Trade Act does not address whether the TAA eligible employee may elect coverage for family members and whether they have an independent right to elect coverage in the second election period.

ii. No Retroactive Coverage. The COBRA coverage elected during this special second election period starts on the first day of the new election period. It does not allow for retroactive coverage to the initial loss of coverage date.

e. Caution

These additional benefits under the Trade Act will be available to only a limited number of employees. The details of this benefit are beyond the scope of this Guide. A limited provision is included within the sample notices. If an employer has employees who are certified for TAA, the employer should consult with its own legal counsel and Gallagher Benefit Services consultant team.

E. HOW LONG DOES COBRA COVERAGE LAST?

1. Duration of COBRA

Employers must make COBRA coverage available to qualified beneficiaries when there is a loss of coverage caused by a qualifying event. The coverage must be extended for up to 18 months if the qualifying event is a termination of employment or a reduction in work hours. For other events, the coverage must be extended for up to 36 months. The chart below details the maximum duration of COBRA based on the qualifying event:

Qualifying Event	Maximum Benefit Period
a. Termination of employment	18 months
b. Reduction in hours of employment	18 months
c. Death of a covered employee	36 months
d. Divorce or legal separation	36 months
e. Dependent child ceasing to be a dependent	36 months
f. Medicare entitlement for covered employee	36 months
g. Employer Chapter 11 bankruptcy	lifetime for retirees

The duration of COBRA covered is generally measured from the date of the qualifying event.

Example: 18 month event. John has coverage under his employer's plan that includes his wife Mary and children Rebecca and Karen. John's employment is terminated on August 15th, 2015. Coverage ends on August 31, 2015. Because the qualifying event is a termination of employment, John and his family members are entitled to 18 months of COBRA coverage starting from August 15, 2015.

Example: 36 month event. John has coverage under his employer's plan that includes his wife Mary. John and Mary's divorce is finalized on August 15th, 2015. Mary loses coverage effective August 15th as a result of the divorce. Mary is entitled to 36 months of COBRA coverage starting from August 15, 2015.

2. Second Qualifying Events

a. General

A second qualifying event allows a spouse or dependent who is already a qualified beneficiary on COBRA to extend their COBRA coverage under certain circumstances from 18 months to 36 months of coverage. The 36 months of coverage will extend from the date of the original qualifying event. It applies only if the second qualifying event would have caused a loss of coverage if it had occurred first. A secondary event is a termination of employment or reduction of hours being followed by one of the following events:

i. Death of a COBRA-covered employee.

ii. Divorce or legal separation.

iii. Dependent child ceasing to be a dependent.

b. Details

i. Death of a COBRA-covered Employee. When a former employee dies while his or her dependents are covered under COBRA, the spouse and dependent children are allowed to extend their COBRA coverage from the original 18 months to 36 months of coverage.

ii. Divorce or Legal Separation. When a former employee receives a court decree of legal separation or divorce while his or her dependents are covered under COBRA, the spouse and dependent children are allowed to extend their COBRA coverage from the original 18 months to 36 months of coverage.

iii. Dependent Child Ceasing to be a Dependent. When a dependent child ceases to be a dependent (under the definition within the insurance contract or policy) while covered under COBRA, that child is allowed to

extend his or her COBRA coverage from the original 18 months to 36 months of coverage.

c. Notification

It is the responsibility of the covered employee or qualified beneficiaries to notify the employer within 60 days after the second qualifying event. Notification from the covered employee or qualified beneficiary is acceptable for all qualified beneficiaries that are affected. The employer is not required to offer COBRA coverage if notice is not given, so long as the employer was not aware of the second qualifying event independent of the notice.

3. Disability Extension

COBRA coverage can be extended from 18 months to a maximum of 29 months in cases of qualified beneficiaries who are disabled at the time of the termination or reduction in hours. By extending the coverage up to 29 months, COBRA coverage may continue until the qualified beneficiary is entitled to Medicare benefits due to the disability. The 29-month extension of COBRA applies to all family members who had coverage. Three requirements must be satisfied for this extension to apply:

a. Disability

The 11-month extension is available if the qualified beneficiary is determined disabled at any time during the first 60 days of COBRA coverage (beginning on the day after termination of employment or reduction in hours).

b. Social Security Act Determination

The qualified beneficiary must be determined by the Social Security Administration to be disabled. The determination must be made before the end of the original 18-month COBRA coverage period.

c. Notification

If the person is determined disabled, the extension only applies if the qualified beneficiary notifies the plan administrator of the Social Security Administration determination prior to the end of the original 18-month period, and within 60 days after the latest of:

i. the date of the Social Security disability determination;

ii. the date of the qualifying event (the employee's termination of employment or reduction of hours);

iii. the date on which the qualified beneficiary loses coverage under the plan as a result of the qualifying event; or

iv. the date on which the qualified beneficiary is informed, through the furnishing of the plan's SPD or COBRA initial notice, of the obligation to

provide the notice of disability determination and the plan's procedures for providing the notice.

4. Medicare Entitlement before a Qualifying Event

If a covered employee becomes entitled to Medicare before experiencing a qualifying event that is a termination of employment or a reduction in work hours, the maximum period of COBRA coverage for the employee is 18 months but the spouse and dependent children's COBRA coverage would end on the later of:

1. 36 months after the covered employee became entitled to Medicare; or
2. 18 months after the date of the employee's termination of employment.

Example: Frank became entitled to Medicare on September 1, 2015. Frank retires on June 30, 2016. Frank elects COBRA for himself and his wife Elaine. Frank is entitled to up to 18 months of COBRA coverage from the date he retired. Elaine is entitled to up to 26 months of COBRA coverage from the date of Frank's retirement which is the same as 36 months from the date of Frank's Medicare entitlement.

Example: Frank became entitled to Medicare on September 1, 2015. Frank retires on June 30, 2017. Frank elects COBRA for himself and his wife Elaine. Frank is entitled to up to 18 months of COBRA coverage from the date he retired. Elaine is also entitled to up to 18 months of COBRA coverage from the date of Frank's retirement because it results in a longer period of COBRA coverage than if the duration was measured as 36 months from the date of Frank's Medicare entitlement.

F. WILL COBRA COVERAGE EVER END EARLY?

1. General Rule

COBRA coverage may be terminated before the maximum coverage period expires due to the following COBRA cut-off events (Code §4980B (f)(2)(B)):

- **a.** Failure to timely pay COBRA premium.
- **b.** Coverage under other group health plan after electing COBRA.
- **c.** Coverage under Medicare after electing COBRA.
- **d.** Termination of extended coverage for disability.
- **e.** End of employer group health plan.

An employer is allowed, but not required, to terminate COBRA coverage because one of these events occurs. However, an employer is required to terminate COBRA coverage when the insurance contract requires it.

2. Cut-Off Events

a. Failure to Timely Pay

COBRA coverage can be cut off if the premium for continuation coverage is not paid within the required time frame. The payment of premium shall be considered timely if made within 30 days after the due date. The premium does not have to be paid by the qualified beneficiary. Please refer to Section I for discussion of premium payments.

b. Coverage Under Other Group Health Plan after Electing COBRA

COBRA coverage may be cut off if a qualified beneficiary first becomes, after the date of the COBRA election, covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of that particular beneficiary by reason of HIPAA.

i. **Double Coverage.** A qualified beneficiary who already has other group health plan coverage before the COBRA election date cannot be denied an election or have the COBRA coverage terminated before the end of the maximum coverage period.

ii. **HIPAA Amendment.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) adds that the ability to cut-off COBRA coverage hinges on whether the pre-existing condition limitation or exclusion in fact affects the qualified beneficiary. Under HIPAA, a pre-existing condition waiting period can be reduced by any period of prior health coverage so long as the individual is not without coverage for at least 63 days prior to the new coverage. This is called “creditable coverage.” HIPAA suggests that an employer is allowed to cut off COBRA coverage if the qualified beneficiary has enough periods of creditable coverage to reduce the other group health plan’s maximum pre-existing waiting period to zero. HIPAA states that the period of exclusions or limitations for the preexisting condition can last no more than 12 months (18 months for a late enrollee) after the earlier of the enrollment date or the first day of the group health plan’s waiting period. Note: for plan years beginning on and after January 1, 2014, pre-existing conditions are prohibited under medical plans.

iii. **Common Approach.** It may be wise to continue COBRA coverage even after the time an employee becomes covered under another group health plan. Under this view, an employer waits for the former employee or qualified beneficiary to stop making COBRA payments for double coverage. If a qualified beneficiary is willing to continue to pay the

COBRA premium, it could be a strong indication that he or she needs the COBRA coverage for a pre-existing condition. Another approach is to continue COBRA coverage until such time as the other group health plan's preexisting limitation or exclusion is satisfied. Before taking any approach, an employer should consult with their insurance company. The recent changes made by HIPAA indicate that insurance carriers may be more apt to cut-off coverage when the pre-existing waiting period is waived due to prior creditable coverage.

iv. **Scope of COBRA Coverage.** Whatever approach an employer follows, the COBRA coverage must include all COBRA benefits, not just coverage for the pre-existing conditions limited or excluded by the other group health plan.

v. **Eligibility for Other Group Health Plan.** In implementing this COBRA cut-off event, it is not enough for a qualified beneficiary merely to be eligible for other coverage. A qualified beneficiary could be eligible to enroll in another group health plan, but choose to remain covered under the COBRA plan because it offers better benefits. An employer cannot terminate COBRA coverage using this cut-off event, unless the qualified beneficiary is actually enrolled under the other group health plan.

c. Coverage Under Medicare After Electing COBRA

i. **After Election.** COBRA coverage can be cut off when a qualified beneficiary who has elected COBRA coverage subsequently becomes entitled to Medicare. When a qualified beneficiary is entitled to Medicare prior to electing COBRA coverage, then he or she can continue to have coverage under both Medicare and COBRA. However, COBRA does not require the employer to cut off coverage; it merely allows the employer to terminate coverage. Before extending COBRA coverage beyond this cut-off event, an employer should consult with their insurance company. NOTE: when a qualified beneficiary becomes entitled to Medicare prior to electing COBRA coverage, then he or she must be allowed to have coverage under both Medicare and COBRA.

ii. **Bankruptcy.** Medicare entitlement is not a COBRA cut-off event in the Chapter 11 bankruptcy context. For further details on COBRA in a bankruptcy setting, an employer should consult with legal counsel before making any COBRA determinations.

d. Termination for Disability

COBRA coverage can be cut off when a qualified beneficiary, who has become entitled to a 29-month coverage period, receives a final determination by the Social

Security Administration that he or she is no longer disabled. The qualified beneficiary is required to notify the plan administrator within 30 days from the determination of non-disability. COBRA coverage will not end until the month that begins more than 30 days after the determination. The termination of coverage also applies to any other qualified beneficiary family member who received the extension due to the qualified beneficiary's disability. If the qualified beneficiary is still within his or her original 18 months of continuation coverage, he or she can continue COBRA coverage until the expiration of the 18 months.

e. End of Employer Group Health Plan

COBRA coverage can be cut off when an employer ceases to maintain any group health plan. An employer should be cautious: the definition of employer can include other members of a controlled group and successors to a merger or acquisition. For further details, an employer should consult with legal counsel before making any COBRA determinations.

f. USERRA and TRICARE Coverage

IRS Notice 90-58 (responding to issues of the Gulf War), stated that COBRA coverage cannot be cut-off when an individual becomes covered under the Military managed health care plan, known as TRICARE (formerly CHAMPUS).

G. WHAT COVERAGE MUST BE OFFERED?

1. Identical Coverage

Once there is a loss of coverage due to a qualifying event, an employer needs to determine what coverage must be offered to the qualified beneficiaries. According to the statute, the qualified beneficiary must be offered the opportunity to continue the coverage that she was receiving immediately before the qualifying event.

2. Independent Rights

Once a qualifying event occurs, each qualified beneficiary has an independent right to elect continuation coverage. For example, if an employee and family are offered COBRA coverage, each individual can make his or her own election. Although an active employee must have the coverage to cover a child, it is possible to have COBRA coverage for a child when the former employee does not elect to continue coverage. This independent right extends to the termination of COBRA coverage for qualified beneficiaries unless the coverage is terminated during the extension for disability. If the extension is terminated due to non-disability, it affects the entire family.

3. Core vs. Non-Core Coverage

The 1987 proposed regulations required that a qualified beneficiary be allowed to choose

between core and non-core (dental and vision) coverage when electing COBRA. The 1999 final regulations eliminate the distinction between core and non-core coverage and no longer require core coverage be offered separately.

4. Determination of Plans

Employers determine the number of group health plans they maintain and therefore the way in which they offer COBRA benefits. The employer may choose to combine the benefits under one group health plan and thus not offer each benefit separately to qualified beneficiaries.

a. Example 1

Employer maintains health and dental insurance through Insurance Carrier A and vision insurance through Insurance Carrier B. If employer designates the health, dental and vision benefits as a single group health plan for COBRA purposes, then employer does not offer vision-only COBRA coverage. The qualified beneficiary elects the entire package or none of the package.

b. Example 2

Keep in mind that the Employer still has to allow qualified beneficiaries the same rights as active employees. If employer in Example 1 allows active employees to pick and choose among health, dental and vision coverage, then the non-packaged offerings must be made available to qualified beneficiaries.

c. General Rule

Generally, if all health care benefits are provided by a single employer then it is considered one group health plan, unless a written document provides for separate plans.

5. Open Enrollment

Qualified beneficiaries have the same rights as active employees during open enrollment periods to add or drop family members, change coverage, and change carriers, ifavailable. If a qualified beneficiary adds a family member during open enrollment who was not previously covered, that added family member does not become a qualified beneficiary. Qualified beneficiaries must be notified of any benefit or carrier changes at open enrollment and be given the opportunity to change coverage just like active employees.

6. Modification of Coverage

If an employer modifies coverage for similarly situated active employees, the coverage for qualified beneficiaries must be modified in a similar fashion. Some examples of modifications include benefit enhancements, elimination of coverage, and changes in carriers.

7. HMO Coverage

HMOs are covered under COBRA even though the HMO coverage may be of little value to the qualified beneficiary if the qualified beneficiary no longer lives in the HMO's service area. If the employer maintains any other coverage for active employees that may provide coverage in the qualified beneficiary's new area, then the employer must offer that coverage as well within a reasonable period after the qualified beneficiary requests it.

H. WHAT NOTICES SHOULD BE GIVEN?

Under COBRA, notices must be sent when a group health plan first becomes subject to COBRA, when new employees become covered, when employees add spouses, when qualifying events occur, when COBRA coverage is not available, and when there is an early termination of COBRA coverage. Each of the notices is described below. Please refer to the sample notices included in the materials for specific content information. The Department of Labor issued final regulations that govern the notice obligations under COBRA. The final regulations apply to any notice obligation arising in plan years beginning on or after November 26, 2004.

1. Initial COBRA Notice/General Notice

The initial COBRA notice explains to covered employees, spouses and dependents: COBRA law, their notification obligations, and their rights to future COBRA coverage. This notice used tobe called the Initial COBRA Notice. The DOL now refers to this notice as the General Notice. A Model General Notice is provided by the DOL in a Word format on the DOL website at: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra

a. Who Receives it?

The initial COBRA notice is given to all covered employees and spouses. It is not necessary to give the notice to spouses who are not covered under the group health plan. The Notice is considered given to a dependent child if the child shares a residence with the covered employee or the covered spouse who have received the Notice.

b. When is it Given?

The initial COBRA notice is given to covered employees and spouses when a group health plan first becomes subject to COBRA; when new employees become covered; and when employees add spouses to the plan. The initial notice should be furnished within 90 days after commencement of coverage, or if later, 90 days from the date when the plan first becomes subject to COBRA.

c. How is it Delivered?

The initial COBRA notice should be furnished to each covered employee and spouse by first class mail to the covered employee's last known address. If all covered family members are at the same address, then a single notice mailed to

that address and addressed (inside and out) to the employee and spouse is sufficient to notify the employee, spouse and any dependents (considered notified by notice to employee and spouse). A general notice posted on an employee bulletin board or in an employee newsletter would not be considered adequate notice to the spouse of the employee. A plan administrator should be able to prove that the notice was actually *sent* to the employee and spouse. A plan administrator does not need to prove *receipt* of the notice. A plan administrator should follow a standard notification and mailing procedure to demonstrate that the procedure is designed to send the notice to the correct address. The use of a "certificate of mailing", which can be purchased at the post office, is recommended to verify the notice was sent.

d. When is the Notice Considered Provided?

The notice is considered provided as of the date of mailing, if mailed by first-class, certified, or express mail. If the notice is given electronically, then the notice is considered provided as of the date of transmission. If the notice is hand-delivered, it is not considered provided until actually received.

e. Can You use the Summary Plan Description?

A description of the rights and obligations of participants and beneficiaries under COBRA must be included in the Summary Plan Description (SPD). A full initial notice can be added to the SPD and used as the initial notice, if the SPD is delivered to both covered employees and covered spouses using the required delivery methods for the initial notice. The SPD is not normally mailed to the employee and spouse, so an employer may need to change its procedures for delivery of the SPD to meet the initial notice delivery requirements. Since the SPD also must be given within 90 days of commencement of coverage, delivery timelines are not a problem.

2. Notice to the Plan Administrator of a Qualifying Event

All group health plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the DOL/IRS in a future notification (the "Outbreak Period") for all qualified beneficiaries in determining the date for individuals to notify the plan of a qualifying event or determination of disability.

a. Who Receives it?

In the case of a divorce, disability, legal separation, or cessation of dependency, covered employees and qualified beneficiaries are responsible for notifying the plan administrator that they have had a qualifying event. Covered qualified beneficiaries are also responsible for notification of second qualifying events of the death, divorce or legal separation, Medicare entitlement and dependent child

ceasing to be a dependent under the plan. If the notice is not given, then COBRA coverage does not have to be offered. If a plan administrator discovers that one of these qualifying events has occurred after the 60-day notice period has lapsed, the plan administrator may have to terminate coverage pursuant to the insurance contract and plan document without offering COBRA. The plan administrator may also need to provide a new Notice of Unavailability of Coverage.

b. When is it Given?

i. **Divorce, Separation or Loss of Dependent Status.** The notice must be provided or sent to the Plan Administrator, within 60 days after the qualifying event or the date on which coverage would be lost due to the event, whichever is later.

ii. **Disability.** In cases of disability, the covered employee or qualified beneficiary must notify the plan administrator within 60 days of the latest of:

- the date of the Social Security disability determination;
- the date of the qualifying event (the employee's termination of employment or reduction of hours);
- the date on which the qualified beneficiary loses coverage under the plan as a result of the qualifying event; or
- the date on which the qualified beneficiary is informed, through the furnishing of the plan's SPD or COBRA initial notice, of the obligation to provide the notice of disability determination and the plan's procedures for providing the notice.

This notice must be provided before the end of the original 18-month COBRA coverage period.

iii. **Notice Procedures.** The plan administrator may enforce plan notice deadlines against qualified beneficiaries only if they have informed the qualified beneficiaries of both the responsibility to provide the notice and the plan's procedures for providing such notice to the administrator. These procedures need to be disclosed in both the plan's SPD and the initial notice. These procedures include the individual designated to receive the notice, the means by which the notice may be given, the information required to be given and who may provide the notice. Most of these items can be incorporated into a form that the qualified beneficiary must complete in order to provide proper notice. The plan administrator should tell the qualified beneficiary where to access this form both in the SPD and the initial notice.

c. How is it Delivered?

The statutes and regulations do not indicate that the notice from the covered employee or qualified beneficiary to the plan administrator be in writing. However, it is advisable that plan administrators request in all COBRA documentation that these notices be given in writing for record keeping purposes. The plan administrator is allowed to ask for and receive written proof of a decree of divorce, date of legal separation or declaration of disability. Further, plan administrators may have a fiduciary duty to investigate whether a qualifying event has occurred based on an employee's actions or comments (e.g., employee requests to drop spouse from coverage, plan administrator overhears that an employee is going through a divorce, or plan administrator retains records of ages of covered dependent children).

3. Notice of Unavailability of Coverage

The Notice of Unavailability of Coverage is given to an individual who furnishes a Notice of Qualifying Event, a Notice of Second Qualifying Event or a Notice of Disability and is not entitled to COBRA coverage (or extension of COBRA coverage). The Notice of Unavailability of Coverage is a new notice provided by the 2004 Final DOL notice regulations. It provides the individual with an explanation of why COBRA coverage is not available. No model form is provided by the DOL in the Final Regulations. It must be written in a manner calculated to be understood by the average plan participant.

a. Who Receives it?

The plan administrator may notify the covered employee and spouse by furnishing a single notice addressed to both, if both reside at the same location, based on the most recent information available to the plan administrator. Only the participants who are affected by the loss of coverage should receive the Notice.

b. When is it Given?

The Notice must be provided within the time period that would apply for providing the election notice to the individual if he or she was entitled to elect COBRA. The actual number of days is determined by whether the employer is sending the notice or is providing notice to a third party administrator, who then provides the notice.

c. How is it Delivered?

The notice is furnished in a manner reasonably calculated to ensure receipt of the material. This can be done by first class mail to the covered employee's last known address. A plan administrator should be able to prove that the notice was actually *sent* to the qualified beneficiaries. A plan administrator does not need to prove *receipt* of the notice. A plan administrator should follow a standard notification and mailing procedure to demonstrate that the procedure is designed to send the notice to the correct address. The use of a "certificate of mailing", which can be purchased

at the post office, is recommended to verify the notice was sent. It is considered furnished as of the date of mailing, if mailed by first class mail, certified mail, or Express Mail. A hand-delivered notice would be considered furnished upon actual receipt.

4. Election Notice

The election notice informs each qualified beneficiary that they have rights to continue their group health plan coverage under COBRA. A Model Election Notice was provided by the DOL in the 2004 regulations.

For qualifying events occurring on or after May 15, 2020, use the notices found at: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

a. Who Receives it?

A covered employee, spouse or dependent who has a qualifying event which causes a loss in coverage, receives an election notice.

b. When is it Given?

i. Employer as plan administrator. Once a qualifying event occurs, the plan administrator has 14 days from the date they receive notification to notify qualified beneficiaries of their COBRA rights. If the qualifying event is one where the employer has the obligation to notify the plan administrator of the event (such as termination of employment), then the plan administrator has 44 days to send the election notice.

c. How is it Delivered?

The election notice should be furnished to each covered employee, spouse, and dependents by first class mail to the covered employee's last known address. If all covered family members are at the same address, then a single notice mailed to that address and addressed (inside and out) to the employee and spouse is sufficient to notify the employee, spouse and any dependents (considered notified by notice to employee and spouse). A plan administrator should be able to prove that the notice was actually *sent* to the qualified beneficiaries. A plan administrator does not need to prove *receipt* of the notice. A plan administrator should follow a standard notification and mailing procedure to demonstrate that the procedure is designed to send the notice to the correct address. The use of a "certificate of mailing", which can be purchased at the post office, is recommended to verify the notice was sent. The DOL final regulations specifically approve of mailing the notices and consider the election notice furnished on the date of mailing, if mailed by first-class, certified or express mail. The DOL states that if second or third-class mail is used, return/forwarding postage must be guaranteed and address correction must be requested. Although the DOL says that in-hand delivery is acceptable, it is not recommended because of the necessity to provide notices to

other beneficiaries outside the worksite and to prove it was delivered.

d. Cautions

i. Plan administrators should be cautious when sending out COBRA notices. Several courts have held that once COBRA has been offered, the plan administrator cannot cut off coverage if the plan administrator offered the coverage in error (e.g., offering COBRA coverage to an employee, spouse or dependent that was not on the group health plan at the time of the event). If employers offer COBRA in error, they may be responsible for all claims incurred during the COBRA continuation period under their insurance contract.

ii. Plan administrators need to send election notices to all qualified beneficiaries even if they aware that the qualified beneficiary is covered under another group health plan or is entitled to Medicare.

5. Election of COBRA

All group health plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the DOL/IRS in a future notification (the "Outbreak Period") for all qualified beneficiaries in determining the 60-day election period for COBRA continuation coverage.

a. Election Period

Each qualified beneficiary has an election period of 60 days to elect COBRA continuation coverage. Under the law, the 60-day election period starts from the date the notice is "provided" or the date coverage is lost, whichever is later. If the election is not made prior to the expiration of the 60-day election period, then the employer is not obligated to offer COBRA.

b. 60-Day Count

The IRS has recently changed their language on when the 60-day election period starts. The prior language stated that the 60 days was measured from the later of the loss of coverage date or the date the election notice is *sent*. The language has been revised from *sent* to *"provided"*. It is not clear what was intended by using "provided." It is still recommended that plan administrators measure the 60 days from the mailing date. However, if an election is late by only a few days, then the administrator might want to consider adding the normal mailing time (3-5 days) to the 60-day requirement. In any case, elections are considered made on the date they are *sent* (postmarked) to the plan administrator.

c. Who Elects it?

The plan administrator determines where and to whom to send the election form.

Each qualified beneficiary has an independent right to elect COBRA coverage (a parent or legal guardian can elect for a minor child), but a covered employee or spouse that is a qualified beneficiary may elect for all other qualified beneficiaries. For example, a covered employee terminates employment at a time when he or she has family coverage on the employer's plan.

i. Each member of the family can independently elect COBRA coverage.

ii. The covered employee or spouse has the option of electing on behalf of the other family members. This includes a covered employee electing for a spouse.

d. Waiver of COBRA

A qualified beneficiary who waives COBRA continuation coverage during the election period can revoke the waiver at any time before the end of the election period. If a qualified beneficiary does not want to elect COBRA, they simply do not return the election form or notify the plan administrator of the election within the 60-day time period. There is no requirement that a waiver be completed. Therefore, it is not recommended that a waiver be included as a choice on the election form. Inclusion of a waiver could imply that the qualified beneficiary could choose to continue coverage until the waiver is returned to the plan administrator. It also could require the plan administrator take on the extra burden of following up on waivers not returned.

e. Cancellation and Reinstatement of COBRA

i. **From Election Date.** If the COBRA continuation election is made within the 60-day election period, coverage must be provided from the date that coverage would otherwise have been lost. This can be accomplished in one of two ways:

- The plan administrator could cancel the qualified beneficiary from coverage. The qualified beneficiary would be retroactively reinstated once the election and payment are made.
- The plan administrator could leave the qualified beneficiary on coverage during the election period. This method may provide coverage with no guarantee of premium payment. If payment is not made, then the employer risks responsibility for the premium or claims if claims have been incurred. The better way would be to leave the qualified beneficiary enrolled on coverage but hold all claims payments pending the election and payment of COBRA coverage.

ii. **From Revocation of Waiver.** If a qualified beneficiary waives COBRA

continuation coverage and then later revokes the waiver during the 60-day election period, coverage does not need to be provided retroactively to the qualifying event date only to the date of the revocation.

iii. **Caution.** An employer should always check with their insurance carrier before deciding how to handle their COBRA cancellation and reinstatement procedure.

iv. **Duty to Disclose Information.** Plans must respond to inquiries by providers regarding a qualified beneficiary's right to coverage during the COBRA election period. The plan must also respond to provider inquiries during the 45-day or 30-day grace period for premium payments.

f. Confirmation Notice

The plan administrator may choose to inform the qualified beneficiary of receipt of the election of COBRA continuation coverage. However, this is not required by COBRA. The letter can also verify the elections made and the applicable premium payments and due dates.

6. Notice of Early Termination of COBRA Coverage

A plan administrator that terminates COBRA coverage prior to the end of the maximum coverage period must provide a written notice of termination to each affected qualified beneficiary. The DOL did not provide a model form in the Final Regulations.

a. Who Receives it?

The Notice is provided to the covered qualified beneficiary who is losing coverage under COBRA.

b. When is it Given?

The Notice of Early Termination must be furnished by the plan administrator as soon as practicable following the decision to terminate the COBRA coverage early due to late or nonpayment of premiums, termination of the group health plan, becoming covered under another group health plan or Medicare, being deemed not disabled (if covered under the disability extension) or for cause. It may be combined with the HIPAA Certificate of Creditable Coverage.

c. How is it Delivered?

The notice should be furnished to each terminated employee, spouse, and dependent by first class mail to the covered employee's last known address. If all covered family members are at the same address, then a single notice mailed to that address and addressed (inside and out) to each family member who is a qualified beneficiary, is sufficient to notify the employee, spouse and any dependents (considered notified by notice to employee and spouse). If the qualified beneficiaries live at different addresses, then separate notices must be

given. A plan administrator should be able to prove that the notice was actually *sent* to the qualified beneficiaries. A plan administrator does not need to prove *receipt* of the notice. A plan administrator should follow a standard notification and mailing procedure to demonstrate that the procedure is designed to send the notice to the correct address. The DOL specifically approves of mailing the notices and consider the election notice furnished on the date of mailing, if mailed by first-class, certified or express mail. The DOL states that if second or third-class mail is used, return/forwarding postage must be guaranteed and address correction must be requested. Although the DOL says that in-hand delivery is acceptable, it is not recommended because of the necessity to provide notices to other beneficiaries outside the worksite and to prove it was delivered.

7. Conversion Notice

Plan administrators are required to notify all qualified beneficiaries that their COBRA coverage is coming to an end and they have the right to elect an individual conversion policy (if such an option is available under the group health plan). This notice must be sent first class mail to their last known address within 180 days prior to the expiration of their COBRA coverage. Employers may wish to send information about Marketplace coverage to qualified beneficiaries whose COBRA coverage is ending.

8. HIPAA Certificate of Creditable Coverage

These certificates do not have to be provided after December 31, 2014.

9. Electronic Delivery of COBRA Notices

a. ERISA Notice Requirements

The Department of Labor provides a safe harbor under which all ERISA plans, including welfare benefit plans, may use electronic media to provide required notices under ERISA. COBRA notices may be provided electronically under this safe harbor.

b. Delivery to Spouse

Electronic delivery to spouse required that the method be reasonably calculated to ensure actual receipt. Providing notices to an employee's work email address should not be used as notification to a spouse, unless the spouse consents to delivery at that address and has direct access to that email to obtain the notice. Electronic delivery should never be the sole method of delivery to a qualified beneficiary.

c. Delivery to Employer

An employer may, but is not required to, accept an electronic notice of a divorce or other qualifying event, or even a COBRA election from an employee, spouse or other qualified beneficiary. The employer should not require notice to be given

electronically as the sole method of delivery.

d. Subject Line and Recordkeeping

Just like a mailed notice, the subject line of any emailed COBRA notification should include the names of all covered participants/qualified beneficiaries. Delivery of electronic notifications still requires a procedure for electronic mailing and proper recordkeeping of when the notice was sent, to which email address it was sent, to whom it was addressed and the content of the electronic notice.

e. Caution

There is little detailed guidance on the procedures to send electronic COBRA notices. The majority of COBRA notices are delivered to either former employees or spouses, both outside the work environment. The method of electronic delivery to non-employees is more cumbersome and less tested. There is also more room for error in the procedures and in actual delivery, even when attempting good faith delivery. For those reasons, electronic delivery of COBRA notices by the employer is not recommended at this time.

I. HOW DO YOU DETERMINE AND COLLECT PREMIUMS?

1. Premium Calculation

In general, the plan administrator should require qualified beneficiaries to pay the same premium amount for continuation coverage as is charged to similarly situated active employees, spouses, and dependents. COBRA does not require the employer to pay for COBRA coverage; however, the employer has the discretion to pay all or part of that premium for the qualified beneficiary.

a. Administrative Cost

i. **2% Fee.** The plan administrator may require the qualified beneficiary to pay up to 102% of the applicable premium for continuation coverage. The employer may use the 2% fee to help defray the cost of additional administration.

ii. **50% Fee.** If an individual is disabled and continuing their coverage under COBRA for any or all of the 29 months allowed, the plan administrator may require the qualified beneficiary (and any other non-disabled qualified beneficiary family member) to pay up to 150% of the applicable premium for the 11-month disability extension (from the 19th month to the 29th month). However, the plan administrator may not include the 50% surcharge if the disabled qualified beneficiary is not part of the covered group. Also, the plan may not include the 50% surcharge if the disabled qualified beneficiary is entitled to coverage beyond the first 18 months for a qualifying event other than disability.

Example: Lou terminates his employment and elects COBRA for only his spouse and child. Lou's family becomes entitled to the 11 month disability extension because of his disability. During the first 18 months of COBRA coverage, the plan can charge up to 102% of the applicable premium for Lou's wife and child. They then continue to receive COBRA coverage through the 29th month. The plan may only require payment of up to 102% of the applicable premium for Lou's wife and child because Lou – the disabled individual – is not part of the covered group.

The employer may use the 50% fee to help defray the cost of additional administration.

b. Applicable Premium for Insured Plans

The applicable premium for an insured plan is the premium charged by the insurance company, less any rebates for good claims experience. Many plans charge a different premium for a single employee than for the employee with a spouse or family. In general, plan administrators should be permitted to charge each qualified beneficiary who elects single coverage the same premium that is charged to single active employees. This also means that if only a spouse elects COBRA, the spouse should be charged the employee-only rate even if the employee plus spouse rate is higher. The qualified beneficiary must be given the same rights as active employees. Similarly, qualified beneficiaries who elect to cover the entire family should be charged the same premium that is charged by the insurer for active employees who elect family coverage. Before determining any rate to charge a qualified beneficiary, the plan administrator should check with their insurance carrier to determine what premium the carrier charges.

c. Applicable Premium for Self-Funded Plans

The calculation of continuation coverage premium for employers that maintain self-funded plans may require charging more than the same premium as active employees and their dependents. The applicable premium should be based on one of two approved methods:

- an actuarial estimate; or
- the cost to the plan in the last determination period multiplied by a cost of living adjustment (cannot be used where there has been a significant change in benefits or enrollment from the prior determination period).

d. Applicable Premium for Health FSA

Health FSA COBRA premium will be the cost of the annual FSA coverage amount (divided by the months of coverage in the plan year).

e. Applicable Premium for HRAs

Specific guidance on how to determine the COBRA applicable premium for HRAs

has not been issued. The IRS has suggested that one possible alternative would be to permit employers to determine the cost of HRA coverage by adding together all reimbursed claims and administrative expenses attributable for the plan year (separately for each level of coverage if the employer allocation differs by employee election, such as allocating $1,000 to the accounts of employeeselecting self-only coverage and allocating $2,000 to the accounts of employees electing family coverage) and dividing that sum by the number of employees covered for that period (at that level of coverage).

f. Determination Period

Rate changes can be passed on to qualified beneficiaries once each year at the beginning of the determination period. The applicable premium must be determined in advance for each 12-month period. The determination period is any consistent 12-month period selected by the employer. Generally, employers make the determination period coincide with the insurance renewal and rate adjustment date. The determination period is the same for all covered qualified beneficiaries regardless of when their COBRA continuation coverage begins.

g. Mid-Determination Period Changes in Premium

An employer must set the COBRA applicable premium for 12 months prior to the start of the 12 months. It is also made clear that if an insurance carrier increases its rate during the 12-month determination period, the employer cannot pass that increase along to the qualified beneficiaries until the beginning of the next 12-month period. There are only three situations that allow for mid-year premium adjustments:

i. Increase in premium due to a disability extension (up to 150% of applicable premium);

ii. Increase in premium up to 102% or 150% of applicable premium if charging less than that maximum permissible amount; or

iii. Increase (or decrease) in premium if the qualified beneficiary changes to different coverage with a higher (or lower) premium.

2. Payment Due

All group health plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the DOL/IRS in a future notification (the "Outbreak Period") for all qualified beneficiaries in determining the date for making COBRA premium payments.

Payment is considered made on the date it is sent to the plan.

a. Initial Payment

After the plan administrator has received the COBRA election forms, the qualified

beneficiary must be given a 45-day period from the date of the election to make the first premium payment. The first payment must be applied to the period of time starting from the date coverage terminated. If a regular monthly premium becomes due during the 45 days, it will also have to be included in the initial payment.

b. Monthly Payments

After receiving the initial premium payment, the plan administrator must allow a qualified beneficiary to pay for COBRA coverage in monthly installments. If the plan administrator chooses, the qualified beneficiary may also be allowed to pay for COBRA coverage at other intervals (e.g., quarterly or semi-annually).

c. Grace Period

COBRA law extends the date that the monthly premium is due to include a grace period of 30 days or – if the plan permits – a longer period of time. This grace period does not extend to the initial premium payment. Payment is considered timely if made by the latest of:

- 30 days from the due date;
- The period of time that is provided to covered employees or qualified beneficiaries to make premium payments; and
- The period of time that is provided to an employer to make premium payment for the group to the insurance carrier, HMO, or TPA.

Having a grace period in which to make premium payment to the employer may be an advantage to a qualified beneficiary, but it is a clear disadvantage to the employer. In essence, the grace period allows a qualified beneficiary to purchase COBRA coverage after the coverage has already been in effect. Because of this, the qualified beneficiary is able to determine if the coverage was needed, and decide if retroactive payment should be made.

3. Payment Method

The employer is able to choose how premium payment and collection will be monitored. Each of the following methods has its advantages and disadvantages. The first two methods may require the least administration, but they do not assist the plan administrator in keeping track of qualified beneficiaries. The third method requires the most administration and greater cost to the employer, but it assures that qualified beneficiaries are notified each month of their premium due date, and allows the plan administrator to keep track of qualified beneficiaries.

a. Election Notice

The first and simplest method is to provide information on the premium and when it is due in the election notice. If payment is not received by the end of the grace period, coverage is terminated without further notice.

b. Coupon Billing

The second method is to use a coupon billing system. Coupons are provided to the qualified beneficiary when COBRA continuation coverage begins. The qualified beneficiary returns a coupon with each monthly payment. If payment is notreceived by the end of the grace period, coverage is terminated without further notice**.**

c. Monthly Billing

The third method is to send the qualified beneficiary a monthly bill for the premium due. If the payment is not received by the end of the grace period, coverage is terminated without further notice.

4. Delinquent Payment

a. NSF Checks

A plan administrator who receives an NSF check in payment for a monthly COBRA premium must allow the qualified beneficiary the opportunity to make the payment prior to the grace period expiring. If the plan administrator is notified that the check is NSF after the expiration of the grace period, it is advisable to check with the insurance carrier or TPA prior to accepting any further payment as correction for the NSF payment. A plan administrator should consider including a statement in the qualifying event notice and monthly bills or coupons, if applicable, that payment by NSF check does not constitute payment and that coverage will terminate if full payment by immediately available funds is not made by the last day of the grace period.

b. Partial Payment

A plan administrator who only receives a partial payment by the last day of the grace period may terminate coverage for the qualified beneficiary due to lack of payment. The plan administrator may want to notify the qualified beneficiary that full payment was not received and that COBRA coverage will terminate if full payment is not made before the last day of the grace period. Once again, a plan administrator may want to consider including this language in the qualifying event notice.

c. Payment Short by Insignificant Amount

A COBRA premium payment that is short by an insignificant amount will be deemed to satisfy the COBRA payment requirement, unless the plan notifies the qualified beneficiary of the deficiency and allows a reasonable time for the deficient payment to be made. A period of 30 days after notice is considered a reasonable time. A premium payment shortfall is insignificant if it is less than or equal to the lesser of: (i) $50; or (ii) 10% of the COBRA premium required by the plan.

d. Grace Period Notice

A plan administrator may provide an additional reminder notice prior to the end of the grace period that the qualified beneficiary's coverage will be terminated if payment is not made before the grace period expires. This is not a required notice, but may be helpful if monthly bills or coupon books are not used as reminders.

e. Termination Notice

When canceling a qualified beneficiary for nonpayment of premium, a plan administrator must notify the qualified beneficiary that coverage has been terminated as of a certain date. This notice can also serve to remind the qualified beneficiary that once coverage is canceled, it cannot be reinstated.

5. Who Pays for COBRA?

Employers must accept a COBRA premium payment from the qualified beneficiary or any other willing payer. There may be instances where it may be appropriate for the employer or a third party to pay the COBRA premium for a qualified beneficiary (e.g., newemployers, ex-spouse pursuant to a divorce decree, state Medicaid programs, and legal representatives). Payment cannot be rejected solely because the payment was not received from a qualified beneficiary.

Note: Qualified beneficiaries that are automatically enrolled in employer-subsidized COBRA lose their right to a special enrollment right to purchase individual coverage at a state or federally-facilitated Marketplace. Before deciding to accept employer-subsidized COBRA, qualified beneficiaries should be advised that that by accepting the subsidized COBRA coverage, they will not be able to enroll in an individual Marketplace plan (and possibly receive premium tax subsidies) until an annual Marketplace open enrollment period or upon the exhaustion of the full duration of their COBRA coverage.

J. WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

Employers that violate COBRA requirements could face penalties under the Internal Revenue Code and ERISA. Both laws have distinct penalty provisions. Further, employers are at risk for lawsuits filed by the Department of Labor and/or qualified beneficiaries. The penalties are detailed and confusing. It is our recommendation that the employer consult legal counsel for a thorough understanding of the penalties should a non-compliance issue occur.

1. IRS Penalties

a. Excise Tax

The IRS penalty is a non-deductible excise tax of up to $100 per day per violation during the non-compliance period. This period begins on the date of the COBRA violation and ends on the date of the correction. If a violation occurs to more than one qualified beneficiary in the same family, the maximum excise tax is $200 per day for that violation and that family. The IRS has the option to waive all or part of

a penalty tax if the penalty is excessive relative to the violation, or they find the violation to be inadvertent.

b. IRS Form 8928

Employers liable for an excise tax failure must self-report the violation by filing IRS Form 8928 and pay the tax by the due date for filing their federal income tax returns. The excise tax reporting provisions apply to any Form 8928 that is due on or after January 1, 2010. There are exceptions to paying the tax for example where failures are not discovered exercising reasonable diligence, or to failures due to reasonable cause (and not willful neglect) that are timely corrected.

c. Audit Rule

If a violation is not corrected before the IRS sends the employer a notice of examination for income tax liability (an audit letter) and the failure occurred or continued during the period of examination, then a minimum excise tax applies. The tax would be the lesser of $2,500 ($15,000 if failures for any year are more than de minimis) or the $100/day excise tax calculation.

d. Grace Period

An employer should always correct a failure to offer COBRA as quickly as possible once it is determined a failure has occurred. If a COBRA violation is due to reasonable cause rather than willful neglect, and the violation is corrected within the first 30 days after the employer knew or reasonably should have known that it failed to comply with COBRA, no penalty tax applies.

e. Correction

In order to stop the IRS penalty tax from continuing to accrue, the employer should retroactively undo the failure to the extent possible. This means the employer should place the qualified beneficiary (or estate) in a financial position that as good as it would have been had the violation not occurred. For these purposes, it is assumed that the qualified beneficiary would have elected to receive the maximum amount of benefits allowed under the group health plan. If the employer's group health plan is fully insured or self-funded with reinsurance, the employer should always check with the insurance carrier prior to offering any retroactive coverage.

2. ERISA Penalties

Under ERISA, a participant or qualified beneficiary may bring a civil action against the employer. There is a penalty which the court, at its discretion, may impose for an employer who fails to provide the initial COBRA notice and the qualifying event notice in a timely manner. The employer may be liable to the individual who failed to receive notice, for up to $110 per day from the date of failure to comply. Unlike the IRS penalty, there is no family, per day, maximum under ERISA. This penalty may also apply if an employer does

not provide requested COBRA information to a qualified beneficiary within 30 days from the actual request.

3. ERISA Lawsuit Claim Liability

ERISA allows a qualified beneficiary to file suit against an employer for failure to provide COBRA coverage. If the qualified beneficiary prevails, the employer could be required to pay the qualified beneficiary's claims that were incurred during the non-compliance period.

4. Attorneys' Fees

Employers should bear in mind that in addition to claim liability in an ERISA lawsuit, they might risk having to pay the qualified beneficiary's attorneys' fees.

5. Public Health Service Act Penalty (PHSA)

Under the PHSA, a participant or qualified beneficiary (or HHS) may bring suit for equitable relief against plans maintained by any state or any political subdivision of a state, or by any agency or instrumentality of a state or political subdivision of a state. The IRS and ERISA penalties described above do not apply to such plans.

K. ADMINISTRATION AND RECORDKEEPING PROCEDURES

1. Administration and Recordkeeping Requirements

Employers administering their own COBRA program must use *consistent* and *verifiable* procedures when sending COBRA general (initial) and election notices. The failure to maintain proper documentation of compliance can hurt the employer in the case of an IRS audit and may protect the plan against the threat of litigation.

In order to prove compliance, employers should be able to document what notices were sent, when they were sent, what elections were made by the qualified beneficiary, and any correspondence sent between the plan and the qualified beneficiary.

a. Written Procedures

Plan administrators should develop written procedures for administering the COBRA program. Written instructions detailing the steps to be taken in the COBRA process are important as a reference for the employees administering COBRA. The written process will ensure that COBRA notices are being handled consistently and accurately.

b. COBRA Process

Develop a process to document that proper notices are sent in a timely manner. The following steps are a good framework for documenting the COBRA process:

- Check the employee's enrollment form for coverage, i.e., single, two person, or family.

- Personalize the notice with the employee's name as well as the spouse's name if coverage is requested for the spouse.
- Record the date the general notice is mailed on the employee's enrollment form and make a copy of the notice for the employee's file.
- To ensure proof of mailing, a "certificate of mailing", available from the U.S. Postal Service, is recommended for sending the general and qualifying event notices. A copy of the certificate should be retained in the employee's file.
- Keep a COBRA notification logbook or spreadsheet where the notices, dates of mailing or other correspondence can be recorded.
- Keep employee's change of coverage forms. This provides documentation needed to explain why a COBRA notice was or was not sent.

L. STATE CONTINUATION COVERAGE OVERVIEW
(Note: Requirements generally apply to insured plans only)

1. Alabama

The state of Alabama currently has no law that requires group health policies to offer continuation coverage generally. There is, however, a domestic abuse insurance protection requirement which can result in continuation of coverage under a fully insured group health plan as follows:

Insurers are prohibited from terminating health coverage for a subject of abuse, where the subject of abuse does not qualify for coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), because coverage originally was issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse or the abuser's coverage has terminated voluntarily or involuntarily. The insurer can require the subject of abuse to pay the full premium for the subject's coverage and may terminate continuation coverage after 18 months.

For more information regarding Alabama domestic abuse insurance protection, see Code Section 27-55 or contact the Alabama Department of Insurance at https://www.aldoi.gov/.

2. Alaska

The state of Alaska currently has no law that requires group health policies to offer continuation coverage.

3. Arizona

a. Employers Affected

All employers maintaining insurance policies issued for delivery in Arizona are affected.

b. Eligibility for Coverage

The covered family members of a named insured who lose coverage due to the death

or divorce of the named insured are eligible for coverage.

If a group plan specifies that coverage of dependent child shall terminate upon attainment of a specified age, the attainment of such age will not operate to terminate the coverage of the child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical handicap and chiefly dependent upon the employee for support and maintenance. The employee must show proof of incapacity and dependency to the insurer within 31 days of the child's attainment of the specified age and thereafter, as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the specified age.

c. Qualifying Events

Coverage is triggered if a covered family member of a named insured loses coverage due to the death or divorce of the named insured.

d. Election Requirements

The person exercising the continuation rights shall notify the insurer and pay the appropriate premium within 31 days following the termination of the existing policy.

e. Duration of Coverage/Premiums

Coverage must continue unless: (1) premiums are not paid; (2) the insured commits an act of fraud or misrepresentation under the terms of coverage; (3) the insurer discontinues its individual insurance coverage; (4) for network plans, the insured ceases to live or work in the area served by the plan; or (5) for individual coverage through an association, the insured ceases membership in the association.

A monthly premium rate shall be offered to the person exercising continuation rights.

f. Termination of Coverage

No provisions, but see the “Duration of Coverage/Premiums” section above.

g. Notice Requirements

The law imposes no notice responsibility on the employer. Where coverage would be lost due to the divorce of the named insured, the person petitioning for the divorce is required to notify the spouse of the right to continue coverage.

For more information regarding Arizona’s continuation coverage, contact the Arizona Department of Insurance at 602-364-3100 or on the web at: https://difi.az.gov/insurance.

4. Arkansas

a. Employers Affected

All public and private employers with fewer than 20 employees and fully insured plans.

b. Eligibility for Coverage

An employee (or spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated and who has been covered continuously under the applicable policy for the three months immediately before the qualifying event causing termination of his or her group coverage is eligible for continuation coverage. Employers are not required to provide coverage for individuals who are Medicare eligible or covered by another group health plan that does not impose a pre-existing condition.

Continuation coverage does not apply to dental, vision, or prescription drug expenses.

c. Qualifying Events

An employee, spouse, or dependent is entitled to continuation coverage if coverage is terminated because of the employee's termination of employment, or employee's change in marital status.

d. Election Requirements

In order to be eligible for continuation of coverage, the individual must make a written election of continuation within 10 days after a qualifying event occurs.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to 120 days after a qualifying event occurs. Required monthly premiums must be paid in advance in accordance with policy requirements.

f. Termination of Coverage

The right to continuation coverage ends (1) 120 days after continuation coverage began; (2) the end of the period for which the individual makes timely premium payments; (3) the contribution due date following the date employees, their spouses, or dependents become eligible for Medicare; or (4) the date on which the policy is terminated or the group withdraws from the plan (provided the group policy is not replaced).

g. Notice Requirements

The certificate of coverage, policy, or contract must contain a provision for continuation of coverage.

For more information regarding Arkansas state continuation, see Code Section 23-86-114 or contact the Arkansas Insurance Department at

http://www.insurance.arkansas.gov.

5. California

a. Employers Affected

All employers providing group insurance.

b. Eligibility for Coverage

An employee (or a dependent of such an employee) of an employer with more than 20 employees who is continuing coverage after exhausting federal COBRA coverage or an employee (or a dependent of such an employee) of a small employer (2-19 employees) who has a qualifying event.

c. Qualifying Events

- Termination of employment
- Reduction in hours
- Death of the former employee
- Divorce or legal separation
- The former employee becomes eligible for Medicare
- The dependent is no longer considered a dependent under the group plan

d. Election Requirements

Elections pursuant to Cal-COBRA must be made in writing and delivered via reliable means of delivery to the health care service plan within 60 days of the later of: (1) the date of the qualifying event; or (2) the date the qualified beneficiary receives notice of the right to continue coverage under Cal-COBRA.

e. Duration of Coverage/Premiums

If a small employer's former employee is eligible for Cal-COBRA coverage because employment ended or because working hours were reduced, Cal-COBRA for the former employee, spouse, and dependents may continue for up to 36 months.

If the former employee's spouse or dependent is eligible for Cal-COBRA coverage because of any of the other qualifying events, their coverage may continue for up to 36 months.

A health insurer that provides coverage under a group benefit plan to an employer shall offer an insured who has exhausted continuation coverage under federal COBRA the opportunity to continue coverage for up to 36 months from the date the insured's COBRA coverage began if the insured is entitled to less then 36 months of continuation coverage under COBRA.

Premiums for continuation coverage cannot exceed 110% of the cost of coverage. For coverage due to disability, the premiums cannot exceed 150% of the cost of coverage.

f. Termination of Coverage

Coverage under Cal-COBRA terminates upon: (1) 36 months after the qualifying event; (2) coverage under Medicare; (3) coverage under another group health plan; (4) failure to make timely premium payments; (5) termination of employer's group plan; or (6) qualified beneficiary commits fraud or moves out of service area.

g. Notice Requirements

Group health plans and insurers must include a notice of the continuation benefit in each certificate of coverage or other legally required document. In addition, notice must be given to employees or members of the availability, terms, and conditions of continuation coverage within 14 days of the termination of group coverage.

For more information regarding Cal-COBRA, contact the California Department of Managed Health Care at 888-466-2219 or on the web at: https://www.dmhc.ca.gov/HealthCareinCalifornia/TypesofPlans/KeepYourHealthCoverage(COBRA).aspx#.WYICzv6WyUl.

6. Colorado

a. Employers Affected

Colorado's continuation requirement applies to employer-provided health policies insuring at least 10 employees. Colorado's continuation statute also applies to associations, including labor unions that insure at least 25 members.

b. Eligibility for Coverage

An election may be made if the employee has been continuously insured for at least six months immediately prior to the event. The employer is not required to offer continuation coverage for persons covered by Medicare or Medicaid.

c. Qualifying Events

Employees or their dependents may elect continuation coverage upon termination of employment, the employee's death or the employee's change in civil union or marital status.

d. Election Requirements

The employee must notify the employer in writing of his election to continue coverage and must make proper payment within 30 days after the date of termination of employment unless the employer fails to give a timely notice. If the employer fails to notify an eligible employee of the right to elect continuation coverage, the employee has 60 days after termination of employment to elect coverage and make payment.

e. Duration of Coverage/Premiums

An eligible employee has the right to continued coverage for a period of 18 months after the qualifying event or until the employee becomes eligible for other group

coverage, whichever occurs first. Should the new coverage exclude a condition covered under the continued plan, coverage under the prior employer's plan may be continued for the excluded condition only for eighteen months or until the new plan covers the condition, whichever occurs first. The notice to the employee must inform the employee of the amount the employee must pay monthly to the employer in order to retain coverage. The premium payment includes the employer's contribution for the employee in addition to the employee's own contribution.

f. Termination of Coverage

The right to continuation coverage is lost when the employee becomes eligible for other group coverage. In addition, loss of coverage will result if timely payment of premiums is not made.

g. Notice Requirements

A written notice must be postmarked within ten days of termination. The communication must notify the employee of the right to elect to continue existing coverage at the applicable rate, the amount and manner of the monthly payments, the time by which the payments must be made, and the fact that coverage will be lost if timely payment is not made. If the employer fails to notify an eligible employee of the right to elect continuation coverage, the employee may retain coverage by making payment within 60 days of the termination of employment.

For more information regarding Colorado state continuation coverage, contact the Colorado Division of Insurance at 303-894-7490 or on the web at: https://dora.colorado.gov/consumer-protection-health-insurance.

7. Connecticut

a. Employers Affected

All fully insured group health insurance policies issued in Connecticut to employer group policyholders are subject to this law. This encompasses small and large employer groups of all sizes, including groups that employ both under and over 20 employees. The law applies to Connecticut group health policies issued to any type employer, including private employers, public employers, non-profit employers, and church plans.

Coverage subject to Connecticut continuation includes group health insurance policies providing hospital expense coverage, medical-surgical expense coverage, hospital indemnity coverage, major medical expense coverage, hospital and medical service plan contracts, and hospital and medical coverage provided to subscribers of a health care center. This law does not apply to stand-alone dental or vision coverage.

b. Eligibility for Coverage

Employees, their spouses and unmarried children under age 26 are eligible for

coverage, pursuant to the requirements of COBRA or state continuation. Employees, spouses and dependents who have exhausted federal COBRA rights may continue coverage for an additional period of up to a total of 30 months under state law.

A stepchild must be covered on the same basis as a biological child. If a group health plan specifies that a child's coverage must terminate upon that child's attainment of a specified age, the attainment of that age will not operate to terminate the coverage of the child while the child is unmarried and is incapable of self-sustaining employment by reason of mental or physical disability and chiefly dependent upon the employee for support and maintenance. Proof of disability and dependency must be furnished to the insurer by the employee within 31 days of the child's attainment of the specified age and thereafter, as may be required by the insurer, except that the insurer may not require proof more frequently than once every year.

Employees, their spouses and employees' dependents cannot elect to continue plan coverage pursuant to this state law if they are eligible for Medicare.

c. Qualifying Events

Loss of coverage due to: layoff; reduction of hours; leave of absence; and termination of employment, other than as a result of gross misconduct, triggers a right to continuation coverage for a period of up to 30 months.

In addition, employees and covered dependents are entitled to an extended period of continuation coverage in cases where a loss of coverage due to the employee’s reduction of hours, leave of absence or termination of employment results from an employee’s eligibility to receive Social Security income.

Upon the loss of group coverage in these instances, individuals who are deemed totally disabled on the date of termination who submit a disability claim within one year of plan termination must be provided with 12 months of continued coverage without premium payment. Additionally, continuation of coverage for such employee and such employee’s covered dependents will continue until midnight of the day preceding such person’s eligibility for Medicare.

Loss of coverage due to the death of the employee, divorce or legal separation, the employee’s enrollment in Medicare, or a dependent’s loss of depend child status triggers a right to continuation coverage for the same period as provided under federal COBRA (currently 36 months).

An additional 120-day period of coverage may be available in the case of certain plant closings.

d. Election Requirements

The initial election for continuation coverage for employees, spouses or dependent children must be made within 60 days of receipt of notice of availability of the

coverage.

e. Duration of Coverage/Premiums

Coverage generally lasts for 30 months after group coverage terminates. Extension of the maximum continuation coverage period for an additional six months (to up to 36 months in total) will be honored for covered spouses and dependents when one of the following second qualifying events occurs within the first 30 months of continuation coverage: death of the employee or former employee; entitlement of employee or former employee to Medicare benefits (under Part A, Part B, or both); divorce or legal separation; or if the dependent child stops being eligible under the Plan as a dependent child.

Employees, spouses and beneficiaries who have exhausted federal COBRA rights may continue coverage for up to an additional 12 or 18 months following the exhaustion of their COBRA coverage period.

Premiums for continuation coverage may not exceed 102% of the actual cost of coverage.

f. Termination of Coverage

Continuation coverage may be terminated prior to the end of the applicable maximum coverage period upon the covered individual's eligibility for other group coverage except in cases of total disability, in which case coverage will end upon the individual's eligibility for Medicare.

g. Notice Requirements

An employer or a group health plan must provide notice to employees, their spouses and employees' dependents about their right to continue group health plan coverage and their opportunity to make an election for continuation coverage. Model general and election notices are available on this page: https://portal.ct.gov/CID/Connecticut-Insurance-Information/COBRA--Update.

For more information regarding Connecticut's expanded state continuation coverage, please refer to these FAQs - https://portal.ct.gov/-/media/CID/30MonthContinuationFactSheetpdf.pdf. You can also contact the State of Connecticut Insurance Department at 212-480-6400 or on the state's website - https://portal.ct.gov/OHA/Health-Care-Plans/Other-Plans/COBRA.

8. Delaware

a. Employers Affected

Generally, small employers maintaining group health policies delivered, issued, renewed or continued in Delaware and not subject to federal COBRA are affected. A "small employer" for these purposes is any employer that normally employs 1-19 employees on a typical business day during the preceding calendar year. Policies offering coverage for limited benefits, such as dental or vision, are excluded.

b. Eligibility for Coverage

An employee or eligible dependent who has been continuously insured under the group policy during the entire three month period ending with the termination of group coverage is eligible. Persons covered by or otherwise eligible for Medicare or other employer-provided group coverage as a dependent upon the loss of coverage are ineligible. Individuals eligible for continuation coverage under federal COBRA or the Public Health Service Act are also ineligible.

c. Qualifying Events

Coverage is triggered for an employee and eligible dependents when group coverage would otherwise terminate due to of termination of employment (other than due to gross misconduct), reduction in hours, Medicare entitlement, or bankruptcy of employer. Spouses and dependents are also entitled to continuation coverage in the event of death of the employee, divorce, or cessation of status as a dependent child.

d. Election Requirements

The initial election for continuation coverage for employees, spouses or dependent children must be made within 30 days of receipt of notice of availability of the coverage. Upon written affirmative election, the coverage will begin as of the date of the qualifying event.

e. Duration of Coverage/Premiums

For eligible employees, spouses and dependent children, continuation coverage generally must be provided for a period not to exceed 9 months from the qualifying event.

The premium charged must not be more than 102% of the group rate of the insurance being continued, as of the due date of each payment.

f. Termination of Coverage

Continuation coverage of an employee (and spouses and dependents) will terminate on the earlier of (1) the date the employer ceases to provide any group health plan; (2) the date coverage ceases due to failure to make timely premium payments; or (3) the date the 9-month continuation period ends.

g. Notice Requirements

Notice of continuation rights must be provided by an employer to the plan administrator, the covered employee and the insurer within 30 days of the qualifying event. A model notice can be found here. Additionally, the insurer must be notified by the employer or plan administrator within 14 days of an employee's or eligible dependent's election for continuation coverage.

Employees and eligible dependents are required to notify the employer or plan

administrator within 14 days of the qualifying event if they are initially ineligible for continuation coverage due to eligibility or enrollment in other group health plan coverage Medicare.

For more information regarding Delaware state continuation coverage, contact the Delaware Department of Insurance at (800) 282-8611 or at their website - https://insurance.delaware.gov/.

9. District of Columbia

a. Employers Affected

Private and public employers who maintain an insured group benefits plan issued or renewed in the District of Columbia and not subject to federal COBRA are affected.

b. Eligibility for Coverage

Continued coverage is available to employees, their spouses, and employees' dependents. Persons entitled to Medicare or other employer-provided group coverage that does not contain pre-existing condition exclusions are not eligible.

c. Qualifying Events

Employers must permit employees, their spouses, and qualifying dependents to elect continuation coverage when they lose health benefit plan coverage for any reason (other than gross misconduct).

d. Election Requirements

The covered employee or eligible dependent must elect continued coverage and pay the initial premium within 45 days after the date group health benefit plan coverage terminates. The insurer must be notified within 15 days of the employee's or eligible dependent's election.

e. Duration of Coverage/Premiums

Coverage generally lasts for three months beyond termination of coverage. The premium charged must not be more than 102% of the group rate in effect on the due date of each payment.

f. Termination of Coverage

Continuation coverage will terminate if the covered individual establishes residence outside of the health insurer's service area, fails to make timely payment of the required cost of coverage, violates a material condition of the contract, becomes covered under another group health benefits plan that does not contain any exclusion or limitation with respect to any pre-existing condition that affects the covered individual, becomes entitled to Medicare, or the employer no longer offers group health benefits coverage to any employee.

g. Notice Requirements

Notice of continuation rights must be provided by an employer to the covered employee within 15 days of the date that coverage under the health benefits plan would otherwise terminate.

For more information regarding District of Columbia continuation coverage, contact the District of Columbia Department of Insurance, Securities and Banking at (202) 727-8000 or on the web at: http://disb.dc.gov.

10. Florida

a. Employers Affected

Public and private employers with fewer than 20 employees, including self-insured public employers. This summary is restricted to private employers.

b. Eligibility for Coverage

An employee (or a dependent of such an employee) of a small employer (under 20 employees) who loses coverage due to a qualifying event and was covered under the plan on the day before the qualifying event.

c. Qualifying Events

- Death of the covered employee
- Termination or reduction of hours of the covered employee's employment (except for termination for gross misconduct)
- Divorce or legal separation of the covered employee
- Entitlement to Medicare
- Ceasing to be a dependent child
- Loss of coverage for a retiree or the spouse or child of a retiree within one year before or after the bankruptcy of employer

d. Election Requirements

Beneficiaries have 30 days from the date the insurance carrier sends an election notice to elect coverage and make the initial premium payment.

e. Duration of Coverage/Premiums

Coverage after all qualifying events may last up to 18 months. After the initial election and premium payment, the qualified beneficiary must be billed for premiums once each month, due on the first of the month with a 30-day grace period. The premium paid for continuation of coverage during the initial 18 months may not exceed 115% of the applicable premium.

A qualified beneficiary who is determined, under the Social Security Act, to have been disabled at the time of the qualifying event may be able to continue coverage for an additional 11 months (up to 29 months) if the qualified beneficiary provides

the written determination of disability from the Social Security Administration within 60 days of the date of determination of disability and prior to the end of the 18-month continuation period. Premiums for continuation coverage may not exceed 150% of the applicable premium during the 11-month disability extension.

f. Termination of Coverage

Continuation coverage terminates upon the earliest of: (1) 18 months, (2) failure to pay premiums, (3) coverage under a group health plan, (4) entitlement to Medicare, and (5) termination of the group health plan for all employees.

g. Notice Requirements

Carrier must mail an initial notice to each covered employee, spouse, and dependent describing their rights to continuation coverage.

An employee or dependent must notify the plan within 63 days of experiencing a qualifying event, and the carrier must send each qualified beneficiary by certified mail an election notice within 14 days of the receipt of this notification.

For more information, contact the Florida Department of Financial Services, Office of Insurance Regulation, at 800-342-2762 or (850) 413-3140 or visit http://www.floir.com/.

11. Georgia

a. Employers Affected

Employers with fewer than 20 employees offering group insurance and employers offering plans with 20 or more employees with respect to employees aged 60 years or older.

b. Eligibility for Coverage

Any employees, spouses and their dependents that have been continuously covered for six months before the date that active coverage terminates are eligible for continuation coverage pursuant to this state law. Individuals covered under Medicare or Medicaid are ineligible.

c. Qualifying Events

Any loss of coverage except where (1) the employee's termination of employment was termination for cause; (2) coverage was terminated for failure to pay premiums; (3) the individual immediately becomes covered under another group health plan; or (4) the group contract or plan was terminated in its entirety or with respect to a class to which the employee or dependent belonged.

Additionally, for any person 60 years of age or older, a qualifying event also does not include a situation in which the employee's termination of employment was voluntary (for other than health reasons).

d. Election Requirements

Mirrors federal COBRA election rules.

e. Duration of Coverage/Premiums

For eligible employees less than 60 years of age, their spouses and dependents, employers must provide continuation coverage through the end of the month during which the group policy terminates plus an additional three months. Employees aged 60 and over at the time of coverage termination, their spouses and dependents may extend coverage until the earliest of the date: (1) they fail to pay required premiums, (2) they are covered under any other group health plan, (3) they are eligible for Medicare, or (4) the employer terminates all group plans without replacement.

Monthly premiums for those under 60 may not exceed the rates charged for active group members as set forth in the contract or plan. For employees aged 60 and over, premiums may not exceed 120% of the total premium for the active plan.

f. Termination of Coverage

For employees under age 60, termination of continuation coverage occurs upon the earliest of (1) three months (2) failure to pay premiums (3) termination of the group health plan (4) the individual's coverage under another group plan or (5) the individual's eligibility for Medicare. Termination occurs for those employees aged 60 and over (and their spouses and dependents) upon the earliest of events (2) through (5) listed above.

g. Notice Requirements

Information about continuation coverage rights must be included in each certificate of coverage. Notice must include a full description of the continuation right available, including all requirements, limitations, exceptions, the premium required or a brief statement concerning the method of calculation thereof, and the time of payment of all premiums due during the period of continuation.

For more information, contact the Georgia Office of Insurance and Safety Fire Commissioner at 404-656-2070 or 800-656-2298 or visit http://www.oci.ga.gov.

12. Hawaii

a. Employers Affected

Employers who pay regular employees monthly wages equal to at least 86.67 times the minimum hourly wage are required to provide employees with group prepaid health plan coverage, and must provide continuation coverage.

b. Eligibility for Coverage

Employees who have been employed for four consecutive weeks shall be eligible for coverage under their employer's prepaid health care plan.

c. Qualifying Events

Any employee covered under an employer-provided prepaid health care plan who is unable to work because of hospitalization or illness is entitled to continuation

coverage.

d. Election Requirements

N/A

e. Duration of Coverage/Premiums

An employer providing a health care plan to employees must, during the time the employee is unable to work, continue to contribute the employer's share of the premium as paid prior to the employee's inability to work. The employer's obligation to make premium payments shall not exceed three months following the month during which the employee became unable to work or the period for which the employer is committed to pay the employee's regular wages, whichever is longer.

f. Termination of Coverage

An employer is relieved of the responsibility for providing coverage to an employee who is unable to work when the employer is notified that it is no longer the employee's principal employer

g. Notice Requirements

N/A

For more information regarding Hawaii state continuation coverage, contact the Hawaii Department of Commerce and Consumer Affairs at 808-586-2790 or on the web at: http://cca.hawaii.gov/ins/.

13. Idaho

The state of Idaho currently has no law that requires group health policies to offer continuation coverage.

14. Illinois

The state of Illinois has three different insurance statutes relating to group health coverage continuation:

- Illinois Continuation (Mini-COBRA)
- Illinois Spousal Continuation
- Illinois Dependent Continuation

Illinois Continuation (Mini-COBRA)

a. Employers Affected

All group health insurance policies and HMOs. Not applicable to self-insured plans.

b. Eligibility for Coverage

To be eligible for Illinois coverage, an individual must have been covered by the employer's plan for three months before an event.

c. Qualifying Events

Any employees and dependents who would otherwise lose coverage due to termination or reduction of hours of employment, or membership termination.

Coverage is for employees and dependents who would lose coverage due to termination or reduction of hours of employment, or membership termination. Employees who are convicted of or confess to an employment-related felony or theft for which the employer was not responsible are not eligible for continuation coverage. COBRA coverage does not have to be offered if an employee's employment is terminated due to "gross misconduct."

d. Election Requirements

Employees or dependents who want to continue coverage under the group plan must notify the employer in writing within 30 days of the later of (1) the date of the qualifying event; or (2) the date on which they are given notice of their rights to continue coverage.

Eligible individuals must elect continuation coverage within 60 days of the qualifying event. To be eligible, these individuals must have been covered by the policy for three months before the qualifying event and must pay the full premium.

e. Duration of Coverage/Premiums

Coverage will continue for 12 months after the member's insurance would otherwise have ceased due to termination of employment.

For employees, the premium paid must be the total amount of the premium required by the issuer, including the premium portion formerly contributed by the employer

The Illinois Department of Public Health may pay for the COBRA coverage of qualified beneficiaries infected with HIV.

f. Termination of Coverage

Former employees, spouses and/or dependents are not eligible for continuation if covered by Medicare or other group coverage.

Coverage will terminate upon:

- if timely payment of the premium is not made;
- if the employer's group policy is terminated without being replaced.

g. Notice Requirements

An employee must be provided with written notice of continuation rights within 10 days after termination. Notice may be mailed or presented in person. The employer must also send a copy to the insurer.

Employers must notify insurer within 15 days after receiving notice from individuals who intend to continue coverage, and eligible individuals must apply for coverage and pay the first premium within 30 days.

Illinois Spousal Continuation

a. Employers Affected

All group health insurance policies and HMOs. Not applicable to self-insured plans.

b. Eligibility for Coverage

Divorced or widowed spouse and dependents must be covered on the day prior to the qualifying event.

c. Qualifying Events

Upon divorce from or death of employee, must be offered to:

- divorced spouse or
- widowed spouse, and
- dependent children.

Upon employee's retirement, must be offered to:

- spouse (age 55 or older) and
- dependent children.

d. Election Requirements

The former spouses (including widows and widowers) must return the notice of continuation election form by certified mail, return receipt requested, within 30 days after the date of mailing receipt from the insurance company.

e. Duration of Coverage/Premiums

For former spouses (including widows and widowers) under age 55 when continuation coverage begins, coverage continues for two years.

For former spouses (including widows and widowers) age 55 or older, coverage generally continues until eligibility for Medicare (but see "Termination of Coverage").

Special rules apply to the premium payments required by (or on behalf of) spouses or dependent children.

f. Termination of Coverage

As to former spouses who have not yet attained age 55 at the time continuation coverage begins lose the right upon the earlier of: (1) failure to pay premiums; (2) the time when coverage would terminate under the existing policy if the member and former spouse were still married; (3) the date the spouse becomes eligible to participate in another plan; (4) the date the former spouse remarries; or (5) two years from the time coverage commenced.

As to the spouse or former spouse of a retired employee who has attained age 55 at the time coverage begins, coverage will terminate upon the earliest to occur (as applicable) of the following: (1) failure to pay premiums; (2) when coverage would terminate under the existing policy if the employee and former spouse were still married; (3) date the spouse becomes eligible to participate in another plan; (4) date the former spouse remarries; or (5) date of Medicare eligibility.

g. Notice Requirements

Spouses and dependent children must notify the plan within 30 days of the employee's death, entry of divorce decree or attainment of limiting age under the group policy (as applicable)

The employer must notify the insurance company within 15 days after receiving your request for spousal continuation. The insurance company must notify you of the right to continuation by certified mail, return receipt requested, within 30 days after receipt of the notice from the employer.

Illinois Dependent Continuation

a. Employers Affected

All group health insurance policies and HMOs. Not applicable to self-insured plans.

b. Eligibility for Coverage

- Covered dependent children of deceased employee, who are not otherwise covered under the Spousal Continuation Law.
- Covered dependent children who attain the limiting age under the insurance policy or HMO certificate.

c. Qualifying Events

Must be offered to dependent child after death of insured if coverage is not available under the Spousal Continuation Law.

Must be offered to dependent child upon attainment of limiting age under the insurance policy or HMO certificate.

d. Election Requirements

Dependent children, have 30 days from the receipt of the employer's notice to elect coverage.

e. Duration of Coverage/Premiums

Coverage may continue for two years.

The monthly premium for continuation is determined as follows: (1) an amount, if any, that would be charged an employee if the dependent child were a current employee of the employer, plus; (2) an amount, if any, that the employer would contribute toward the premium if the dependent child were a current employee.

f. Termination of Coverage

Dependent continuation coverage may terminate earlier than two years:

- If premiums are not made in a timely manner;
- When coverage would terminate under the terms of the policy if the dependent child was still an eligible dependent of the employee, such as when the employee terminates employment with the employer;
- When the dependent child becomes an insured employee under any other group health plan.

g. Notice Requirements

The dependent child or responsible adult acting on behalf of the dependent child must notify the employer or the insurer in writing of the attainment of the limiting age within 30 days of the date the coverage terminates.

The employer, within 15 days of receipt of the notice, shall give written notice to the insurance company issuing the policy of the attainment of the limiting age by the dependent child and of the dependent child's residence.

The employer shall immediately send a copy of the notice to the dependent child or responsible adult at the dependent child's residence.

Within 30 days after the date of receipt of a notice from the employer, dependent child, or responsible adult acting on behalf of the dependent child, or of the initiation of a new group policy, the insurance company, by certified mail, return receipt requested, shall notify the dependent child or responsible adult at the dependent child's residence that the policy may be continued for the dependent child. The notice shall include: (1) a form for election to continue the insurance coverage; (2) the amount of periodic premiums to be charged for continuation coverage and the method and place of payment; and (3) instructions for returning the election form within 30 days after the date it is received from the insurance company.

Failure of the dependent child or the responsible adult acting on behalf of the

dependent child to exercise the election to continue insurance coverage by notifying the insurance company in writing within such 30 day period shall terminate the continuation of benefits and the right to continuation.

See attached link for information from the Illinois Department of Insurance – https://idoi.illinois.gov/consumers/consumerinsurance/health/lost-your-employer-based-health-insurance-what-to-do.html

Click on the following link for a summary of Illinois continuation opportunities - http://bbpadmin.com/docs/Employer/STC_Continuation_Rights.pdf

15. Indiana

The state of Indiana currently has no law that requires group health policies to offer continuation coverage.

16. Iowa

a. Employers Affected

All public and private employers with fewer than 20 employees and fully insured plans.

b. Eligibility for Coverage

An employee (spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated and who has been covered continuously under the employer's policy for the three months immediately before termination of his or her group coverage is eligible for continuation coverage. An employee, spouse, or dependent is not eligible if that individual is eligible or covered by Medicare or another insured under a group policy providing accident or health coverage, unless the other coverage existed before the current group policy coverage was terminated.

Employers can, but are not required to, provide continuation coverage for dental, vision or prescription drug benefits.

c. Qualifying Events

An employee, spouse, or dependent may elect continuation coverage if coverage is terminated because of (1) termination of the employee's employment, including a temporary or permanent layoff or an approved leave of absence; (2) loss of eligibility for group policy; (3) employee's death; or (4) employee divorce or annulment.

d. Election Requirements

Employees, spouses, and dependents must submit written election of continuation coverage within ten days of: (1) receiving notice of the right to continue coverage

from the employer; or (2) the date of coverage termination, whichever is later.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to nine months. Eligibility for continuation coverage ends when the individual is eligible for Medicare or another health policy or the employer's group policy is terminated without being replaced. The initial premium must be paid within 31 days after group policy coverage terminates. Subsequent premiums must be paid monthly and in advance.

f. Termination of Coverage

The right to continuation coverage ends (1) nine months after the date the individual's group policy coverage would otherwise have terminated but for the continuation of coverage; (2) when any qualified beneficiary becomes eligible for Medicare or another group health arrangement; (3) the end of the period when the last premium payment was made if the individual fails to make timely payment of a required contribution and if proper notice is given; 4) when the employer's group policies are terminated without replacement; or 5) if the qualified beneficiary is a former spouse, when the former spouse is remarried.

g. Notice Requirements

Notice of continuation rights must be provided in the certificates of coverage.

When a covered employee's employment terminates, the employer shall notify the employee of their continuation rights within ten days of termination of employment. When an employer substantially modifies or terminates agreements to provide health insurance, or the group health insurance policy is terminated for failure to pay premiums or another reason, the employer shall notify covered employees, spouses, and dependents of their continuation rights at least ten days prior to termination or substantial modification. These notices shall be in writing and delivered in person or mailed to the person's last known address.

If continuation coverage arises because of dissolution or annulment of employee's marriage or death of the employee, the person eligible for continuation (the spouse or the custodial parent or legal guardian on behalf of a dependent child) must notify the employer of the event within 30 days after the dissolution or annulment of employee's marriage or death of the employee. Within ten days of receipt of that notice, the employer must provide the individual with notice of the continuation rights, and that individual shall have ten days from the date the latter notice is received to elect continuation coverage in writing.

See attached link for information from the Iowa Insurance Division:
https://iid.iowa.gov/health-insurance

17. Kansas

a. Employers Affected

All public and private employers with fully insured plans.

b. Eligibility for Coverage

An employee (spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated and who has been covered continuously under the applicable policy for the three months immediately before termination of his or her group coverage is eligible for continuation coverage. Employers are not required to offer continuation coverage if the employee, spouse, and dependents: (1) are eligible for a replacement group health policy within 31 days of terminating coverage under the employer's group health plan; (2) are eligible for Medicare; (3) are covered by another group health plan providing hospital, surgical, or medical benefits; (4) failed to pay required premiums (after reasonable notice); or (5) are eligible for continuation of coverage under federal COBRA requirements. However, employers are not required to provide continuation coverage if an employee's coverage was terminated for cause (as defined in group policies or certificates of coverage).

c. Qualifying Events

An employer must provide continuation coverage to employees, spouses, or dependents if coverage is terminated under the employer's group health plan for any reason, including termination of the employer's group policies.

d. Election Requirements

Employees, spouses and dependents must submit a written election of continuation coverage and pay the initial premium within 31 days of either (1) the termination of coverage or (2) receipt of notice from the employer of the right to continue coverage, whichever is later.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to 18 months. The amount of the premium must be the same as that applicable to employees remaining on the group. Premiums must be paid at the frequency customarily required by the insurer for the policy and plan selected, so long as payments are not required less frequently than quarterly.

f. Termination of Coverage

The right to continuation coverage ends either: (1) when the individual becomes eligible for Medicare or another health policy; or (2) at the end of the period when the last premium payment was made.

g. Notice Requirements

The employer must provide reasonable notice of continuation rights to the individual. Notice must include: (1) description of right to continue coverage under policy, and (2) premiums and the allowed methods of payment.

For more information regarding Kansas state continuation, contact the Kansas Insurance Department at http://www.ksinsurance.org/.

18. Kentucky

a. Employers Affected

All fully-insured employers with fewer than 20 employees. May apply to policies issued outside of Kentucky covering a Kentucky resident.

b. Eligibility for Coverage

Any employee, spouse, former spouse, surviving spouse or covered dependent children whose coverage under the current employer's group policy has been terminated due to a qualifying event.

The qualified beneficiaries are eligible if they have been covered under employers' grouppolicies for three months before a qualifying event occurs. Individuals eligible for, orcovered by, other group insurance or Medicare are not eligible for state continuation.

c. Qualifying Events

Any employee or covered dependent whose coverage has been terminated due to termination of employment, death, divorce or cessation of dependent status due to the attainment of the age limit.

d. Election Requirements

The qualified beneficiary must elect to extend coverage and send the election form and required premium amount within 31 days after receiving notice of eligibility from the insurer. Election forms and premiums are sent to the insurer.

e. Duration of Coverage/Premiums

Employees and dependents can extend group health insurance for 18 months after the date on which the coverage would otherwise have ended. When the 18-month period for continuation ends, they have a rightto convert to individual coverage that provides benefits substantially similar to thegroup plan.

f. Termination of Coverage

Continued group health insurance coverage terminates on the earlier of: (1) the end of the period for which timely premium payment was made to the insurer; or (2) when the employer terminates the group policy and does not obtain a replacement policy within 31 days.

g. Notice Requirements

Employers must notify group policy insurers when group policy coverage for employees, their spouses and employees' dependents terminates.

After receiving notice from employers, insurers must provide written notice to employees, their spouses and employees' dependents about their right to elect continuation coverage. Notices must be mailed or delivered to employees', their spouses' and employees' dependents' last known address.

If a qualified beneficiary becomes entitled to continued coverage and the insurer fails to give the qualified beneficiary written notice the insurer must give written notice to the qualified beneficiary as soon as practicable after notification of the failure to give written notice of continuation rights. The qualified beneficiary will have sixty (60) days after written notice is received from the insurer to exercise continuation or conversion rights.

If a qualified beneficiary makes application and pays the premium for continued coverage within the additional period, the effective date of continued coverage is the date of termination. However, nothing requires an insurer to give notice or provide continuation coverage to a qualified beneficiary ninety (90) days after termination of the group coverage.

See Section 304.18-110, as well as information from the Kentucky Department of Insurance at:
http://insurance.ky.gov/ppc/Documents/statecontinuationcoverage012612.pdf

19. Louisiana

a. Employers Affected

All public and private employers with two to 19 employees and fully insured group hospital, surgical, or medical plans.

b. Eligibility for Coverage

An employee (spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated and who has been covered continuously under the applicable policy for the three months immediately before termination of his or her group coverage is eligible for continuation coverage.

Employers are not required to provide coverage for individuals who are (1) eligible for another group health plan within 31 days after employee's termination, death, or divorce; (2) if the individual's coverage ended because he or she committed fraud or failed to pay his or her part of the required premiums; or (3) if the individual is eligible for COBRA continuation coverage.

c. Qualifying Events

An employee, spouse, or dependents may elect continuation coverage if coverage is terminated because of the employee's termination, employee's death, or employee's divorce.

d. Election Requirements

In order to be eligible for continuation of coverage, the individual must make a written election of continuation, on a form provided by the employer or group policy insurer, and pay the first contribution, in advance, to the employer on or before the date on which the individual's insurance would otherwise terminate. Election must be made by the end of the month following the month in which the qualifying event occurred. When coverage is lost due to employee's death, surviving spouses over 50 years old have 90 days after the date of death to elect coverage.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to twelve months. Employees, spouses, and dependents must pay the full group premium rate in advance to continue coverage and must pay initial premiums no later than the end of the month following the month in which the group policy coverage terminates. Subsequent premiums must be paid at least monthly.

f. Termination of Coverage

The right to continuation coverage ends on the earliest of (1) twelve months after group policy coverage ends; (2) when the individual becomes eligible for, or covered by, another group health plan offering similar benefits; (3) in the event of premium nonpayment, the end of the period when the last premium payment was paid; (4) the date that the group policy is terminated; or (5) the date on which an enrolled member of a health maintenance organization ("HMO") legally resides outside the HMO service area of the organization. When coverage is lost due to employee's death, continuation

coverage for the surviving spouse over 50 ends when the surviving spouse: (1) fails to make timely premium payments; (2) becomes eligible for Medicare; or (3) becomes eligible for another group health plan; or (4) remarries.

g. Notice Requirements

The certificate of coverage must include a notice of continuation rights.

For more information regarding Louisiana state continuation, see RS 22:1045 and 22:1046 or contact the Louisiana Insurance Department at http://www.ldi.state.la.us/.

20. Maine

a. Employers Affected

Employers with fewer than 20 employees maintaining group health policies issued in Maine are subject to state continuation requirements.

b. Eligibility for Coverage

An employee or member who has been insured under the group policy for at least six continuous months as of the date of the qualifying event is eligible. An employee or member is not eligible for continuation coverage if he is eligible for Medicare, other group coverage or other similar coverage, whether under a group plan or provided for or available under federal or state law. In addition, spouses and dependents of certain state employees and public school teachers are eligible for continuation coverage. Maine law entitles the employee to buy continuation coverage for the employee, the employee and dependent(s), or only the dependent(s) provided that in the latter two cases, the dependents have been covered for a period of at least three months under the group policy, unless the dependents were not eligible for coverage until after the beginning of the 3-month period. [PL 1989, c. 447, §2 (AMD).] If a domestic partner is covered as a dependent under such a small group insurance plan, he or she is entitled to "mini-COBRA" continuation coverage in the same manner as any other dependent. However, it is the employee, not the dependent, who makes this choice.

c. Qualifying Events

The right to elect coverage continuation is triggered if the termination of an individual's group coverage is a result of the member or employee being temporarily laid off or losing employment because of a work-related injury or disease. Coverage is also triggered for a member or employee permanently laid off and eligible for premium assistance under federal law.

d. Election Requirements

The member or employee shall have 31 days from the termination of active coverage in which to elect coverage and make the initial premium payment. At the member’s or employee’s option, they may instead convert the policy to individual

coverage without evidence of insurability.

e. Duration of Coverage/Premiums

Coverage generally lasts for one year after the last day of work. The premium may not exceed 102% of the group rate in effect for a group member, including an employer's contribution, if any.

f. Termination of Coverage

Coverage provided may be terminated sooner than one year if the member fails to make timely payment, the member becomes eligible for coverage under another group policy, or the Workers' Compensation Commission determines that the injury or disease which entitled the employee to continue coverage is not compensable. At the end of the continued group coverage, the member or employee has the same conversion privileges as otherwise granted in Title 24-A: MAINE INSURANCE CODE, Chapter 35: GROUP AND BLANKET HEALTH INSURANCE, § 2809-A. Conversion on termination of policy or eligibility, found here.

g. Notice Requirements

No law.

For more information regarding Maine continuation coverage, refer to the FAQs and resources on this page.

You can also contact the Maine Bureau of Insurance at 800-300- 5000 (ask for the Consumer Health Care Division) or on the web at: https://www.maine.gov/pfr/insurance/index.html.

21. Maryland

a. Employers Affected

Private and public employers of all sizes maintaining group health insurance policies issued for delivery in Maryland are affected. Every insurance policy issued or delivered in Maryland to an employer by an insurance company, HMO or a nonprofit health service insurance plan is required to provide continuation coverage.

b. Eligibility for Coverage

Eligibility for continuation coverage depends on the qualifying event. If the qualifying event is voluntary or involuntary termination of employment, the employee and dependents must have been covered under the employers' group health plan for three months prior to the termination and must be a resident of Maryland. If the qualifying event was the death of or divorce from the employee, spouses must have been covered under employers' group health contracts for 30 days prior to employee death or divorce but dependent children must only have been covered immediately prior to employee death or divorce. Continuation is not available to an individual who is terminated for cause.

Employers must permit and employee's dependent child born to the employee's former spouse after employee's death or divorce to elect continuation coverage.

c. Qualifying Events

Continuation coverage is triggered by loss of group coverage due to termination of employment (voluntary or involuntary; other than for cause), the employee's death, or divorce. The duration of coverage will depend upon the reason group coverage was terminated.

d. Election Requirements

The election period for terminated employees, surviving and divorced spouses, and dependents must begin on the date group coverage ends and end no sooner than 45 days after such date. Coverage is elected by submitting a signed election notification form to the employer during the election period.

e. Duration of Coverage/Premiums

Coverage for terminated employees, surviving spouses, and dependents may last for up to 18 months when termination of coverage is a result of termination or death of the employee. Divorced spouses' coverage will last until they obtain other coverage, or until they remarry. For a dependent child of the employee, continuation coverage ends on the date on which the child would no longer be covered under the group contract if the divorce had not occurred. Coverage may end earlier than 18 months for failure to pay premiums in a timely manner, or for eligibility for other coverage, Medicare entitlement, the employer's termination of all group coverage for all employees, or at the individual's election.

The premium is the full contract premium, including the employees' and employer's contributions, and must be permitted to be paid on a monthly basis. Employers may, but are not required to, add a reasonable administrative fee of up to 2% of the total premium, except that no additional administrative fee may be charged to divorced spouses.

f. Termination of Coverage

Coverage will generally terminate if the insured person fails to make a required premium payment, becomes insured under another group or individual plan, becomes entitled to Medicare, elects to stop coverage under the group contract or when employers terminate group contract benefits for all employees. Coverage for a divorced spouse will also end upon remarriage. Employees or their divorced spouses must provide the employer with written notification within 45 days after becoming eligible for coverage under another employer's group health plan.

g. Notice Requirements

The insurance certificates provided to employees, their spouses and their dependents must include a statement that advises the insured of the availability of continuation coverage, a summary of eligibility for and duration for continuation

coverage, and procedures for electing continuation coverage. Employees, their spouses, and their dependents must notify employers in writing to request election statements no later than 60 days after experiencing a qualifying event. Employers must provide the statements by first-class mail within 14 days after receiving the notices from employees, their spouses, and/or their dependents.

For more information regarding Maryland state continuation coverage, contact the Maryland Insurance Administration at 410-468-2000 or on the web at: http://www.mdinsurance.state.md.us/.

22. Massachusetts

a. Employers Affected

Massachusetts law requires all insurers offering a small group health plan to offer continuation coverage under these plans if the sponsoring employer has between 2 and 19 employees. The Mini-COBRA law does not require continuation of coverage for dental and vision plans.

b. Eligibility for Coverage

Employees and their dependents, as well as surviving and divorced spouses, who are covered under a small group health benefit plan on the day before a Qualifying Event are eligible for continuation coverage. Qualified Beneficiaries can be an employee, the spouse of an employee, or the dependent child of an employee.

c. Qualifying Events

Continuation coverage for covered employees, spouses and dependent children is triggered when coverage is lost due one of the following qualifying events:

- the death of the employee;
- the termination (expect for gross misconduct) or reduction of hours of the employee's employment;
- the divorce or legal separation of the employee from the employee's spouse;
- the employee's entitlement to Medicare;
- a dependent child ceasing to meet the requirements to be an eligible dependent under the plan; or
- bankruptcy proceedings with respect to an employer from whose employment the employee had retired.

d. Election Requirements

Qualified beneficiaries must elect continuation coverage offered by a small group health plan by making a written request within 60 days after the later of the date coverage terminates due to a qualifying event, or the date of notice to elect coverage is sent.

e. Duration of Coverage/Premiums

Premiums charged for continuation coverage under a small group health plan must not exceed 102% of the applicable premium for such period and at the election of the payer may be made in monthly installments. If a qualified beneficiary is eligible

for the 11-month extension due to a finding of disability, the insurer may charge a premium of 150% during those 11 months.

Continuation coverage duration:

- Plant closing: 90 days
- Termination of employment (other than for gross misconduct) or reduction of hours: 18 months
- Death of a covered employee: 36 months
- Divorce or legal separation: 36 months (but see separate divorced spouses law)
- Employee becomes entitled to Medicare: 36 months
- Dependent ceases to meet dependent definition: 36 months

If a qualified beneficiary experiences a second qualifying event (except for an employer's bankruptcy) that occurs within 18 months of a termination of employment or reduction in hours, then the continuation coverage must continue for 36 months from the date of the termination of employment or reduction in hours. In the event of any other qualifying event, the continuation coverage must continue for 36 months from the date of the qualifying event.

f. Termination of Coverage

Coverage will terminate when the maximum coverage period expires (i.e., after 18, 29, or 36 months). Continuation coverage under a small group health plan may also be terminated: (1) for a failure to make timely premium payments, (2) when the qualified beneficiary first becomes covered under any other health benefit plan that contains no exclusion or limitation with respect to a preexisting condition, (3) when an individual becomes entitled to Medicare benefits, or (4) the date that the employer ceases to provide health insurance coverage under any plan to other similarly situated beneficiaries.

g. Notice Requirements

The insurer must notify each eligible employee, spouse and dependent of their rights to continuation coverage at the time coverage commences under a small group health plan. Eligible employees or qualified beneficiaries must notify the insurer in the event of a divorce, legal separation or a change in the status of a dependent child within 60 days of the qualifying event. A qualified beneficiary who is determined to be disabled under Title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event is responsible for notifying the carrier of such determination within sixty days after the date of the determination and for notifying the carrier within thirty days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled.

A carrier must provide notice of continuation rights to qualified beneficiaries after a qualifying event of which the carrier has actual knowledge of within 14 days of

the date the insurer obtains actual knowledge of the event. The insurer may require that all notices required be issued to qualified beneficiaries by the eligible small business or by an intermediary. Employers must notify employees terminated due to plant closings of their eligibility to continue coverage.

For more information on Massachusetts MiniCOBRA coverage, including a discussion on the notice requirements, refer to the MiniCOBRA Continuation of Coverage Benefits Guide - https://www.mass.gov/service-details/minicobra-continuation-of-coverage-benefits-guide.

You can also contact the Massachusetts Division of Insurance at (617) 521-7794 or on the web at: https://www.mass.gov/orgs/division-of-insurance.

23. Michigan

The state of Michigan currently has no law that requires group health policies to offer continuation coverage.

Click on the following link for information from the Michigan Department of Insurance and Financial Services on "Employer Group Coverage" - https://www.michigan.gov/difs/consumers/insurance/health-insurance/individual/employer-group.

24. Minnesota

The state of Minnesota has five different insurance statutes relating to group health coverage continuation:

- Termination Of or Layoff from Employment
- Continuation of Benefits to Survivors
- Continuation and Conversion Privileges for Insured Former Spouses and Children (Divorce)
- Coverage of Current Spouse and Children (Employee Medicare Eligibility; Dependent Reaching Maximum Age under Policy)
- Provision of Benefits for Disabled Employees.

Termination of or Layoff from Employment

a. Employers Affected

Fully insured employers with two or more employees as well as self-insured plans offered by local government units. Does not apply to self-insured non-governmental employers.

A small employer plan must include the continuation of coverage provisions required by COBRA and by state law.

In some circumstances, Minnesota law provides for a longer continuation time than does COBRA.

b. Eligibility for Coverage

Any employee, spouse or covered dependent child whose coverage terminates due to a covered reason (qualifying event) are eligible for continuation coverage.

c. Qualifying Events

- Employee's employment is voluntarily or involuntarily terminated or employee is laid off from employment; or
- Employee's hours of employment are reduced.

d. Election Requirements

The employee has 60 days within which to elect coverage. The 60-day period begins to run on the date group coverage terminates, or on the date upon which the election notice is received, whichever is later.

e. Duration of Coverage/Premiums

The former employee spouse and/or dependent child is eligible to continue the coverage until the earlier of:

- The date the individual becomes covered under another group health plan, or
- for a period of 18 months after the termination of or lay off from employment.

The maximum premium that can be charged is up to 102% of the cost to obtain coverage under the employer's group health plan.

f. Termination of Coverage

- If the former employer stops offering group health coverage to its employees;
- For failing to pay a premium on time;
- When a covered former employee, spouse or dependent child becomes enrolled in Medicare;
- For HMO coverage, right to continued coverage may be lost if the continuee moves outside the HMO approved service area.

g. Notice Requirements

The employer must inform the employee within 14 days after termination or layoff of the right to elect to continue coverage. The written notice is sent to the home address.

Notice must include information regarding:

- the right to elect to continue the coverage;
- the amount the employee must pay monthly to the employer to retain the coverage;
- methods to pay and addresses of the employer as to where premium payments must be sent; and
- premium payment due dates.

Statutory Example:

A notice in substantially the following form shall be sufficient:

"As a terminated or laid off employee, the law authorizes you to maintain your group medical insurance for a period of up to 18 months. To do so you must notifyyour former employer within 60 days of your receipt of this notice that you intend to retain this coverage and must make a monthly payment of $ ____to ____at by the_of each month."

Employers' notices must be in writing and sent by first class mail to employees' last known addresses.

Continuation of Benefits to Survivors

a. Employers Affected

Fully insured employers with two or more employees as well as self-insured plans offered by local government units. Does not apply to self-insured non-governmental employers.

A small employer plan[1] must include the continuation of coverage provisions

[1] (a) "Small employer" means, with respect to a calendar year and a plan year, a person, firm, corporation, partnership, association, or other entity actively engaged in business in Minnesota, including a political subdivision of the state, that employed an average of at least one, not including a sole proprietor, but not more than 50 current employees on business days during the preceding calendar year and that employs at least one current employee, not including a sole proprietor, on the first day of the plan year. A small employer plan may be offered through a domiciled association to self-employed individuals and small employers who are members of the association, even if the self-employed individual or small employer has fewer than two current employees. Entities that are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the federal Internal Revenue Code are considered a single employer for purposes of determining the number of current employees. Small employer status must be determined on an annual basis as of the renewal date of the health benefit plan. The provisions of this chapter continue to apply to an employer who no longer meets the requirements of this definition until the annual renewal date of the employer's health benefit plan. If an employer was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer is based upon the average number of current employees that it is reasonably expected that the employer will employ on business days in the current calendar year. For purposes of this definition, the term employer includes any predecessor of the employer. An employer that has more than 50 current employees but has 50 or fewer employees, as "employee" is defined under United States Code, title 29, section 1002(6)[1], is a small employer under this subdivision.

required by COBRA and by state law.

In some circumstances, Minnesota law provides for a longer continuation time than does COBRA.

b. Eligibility for Coverage

Any widowed spouse and/or covered dependent child whose coverage terminates due to the death of a covered employee are eligible for continuation coverage.

c. Qualifying Events

Death of the covered employee.

d. Election Requirements

The widowed spouse and covered dependent child has 60 days within which to elect coverage. The 60-day period begins to run on the date group coverage terminates, or on the date upon which the election notice is received, whichever is later.

e. Duration of Coverage/Premiums

Coverage may continue until the earliest of the following dates:

- The date the widowed spouse or dependent child becomes covered under another group health plan, or
- As to the widowed spouse, the date coverage would have terminated had the deceased employee lived;
- As to dependent children, the date coverage would have terminated had the deceased employee lived (generally the date the child no longer qualifies as a dependent).

The maximum premium that can be charged is up to 102% of the cost to obtain coverage under the employer's group health plan. Premium is paid to the former employer.

Failure of the survivor to make premium or fee payments within 90 days after notice of the requirement to pay the premiums or fees shall be a basis for the termination of the coverage without written consent. In event of termination by reason of the survivor's failure to make required premium or fee contributions, written notice of cancellation must be mailed to the survivor's last known address at least 30 days before the cancellation.

f. Termination of Coverage

- If the former employer stops offering group health coverage to its employees;
- For failing to pay a premium on time (but see above);
- When a widowed spouse or dependent child becomes enrolled in

Medicare;

- For HMO coverage, right to continued coverage may be lost if the covered spouse or dependent child moves outside the HMO approved service area.

g. Notice Requirements

The employer must inform the survivors within 14 days after notification of the death of the employee of the right to elect to continue coverage. The written notice is sent to the home address. Notice to a widowed spouse and dependent children is sent to their last known address.

Notice must include information regarding:

- the right to elect to continue the coverage;
- amounts employees must pay monthly to employers to continue coverage;
- methods to pay and addresses where to send premium payments, and
- premium payment due dates.

Continuation and Conversion Privileges for Insured Former Spouses and Children (Divorce)

a. Employers Affected

Fully insured employers with two or more employees as well as self-insured plans offered by local government units. Does not apply to self-insured non-governmental employers.

A small employer plan[2] must include the continuation of coverage provisions required by COBRA and by state law.

In some circumstances, Minnesota law provides for a longer continuation time than does COBRA.

b. Eligibility for Coverage

Any former spouse or covered dependent child whose coverage terminates upon entry of a valid decree of dissolution of marriage are eligible for continuation coverage.

c. Qualifying Events

Divorce

[2] *Ibid.*

d. Election Requirements

The former spouse or covered dependent child has 60 days within which to elect coverage. The 60-day period begins to run on the date group coverage terminates, or on the date upon which the election notice is received, whichever is later.

e. Duration of Coverage/Premiums

Coverage may continue until the earliest of the following dates:

- The date the former spouse or dependent child becomes covered under another group health plan, or
- As to the former spouse, the date coverage would have otherwise terminated;
- As to dependent children, the date coverage would have otherwise terminated (generally the date the child no longer qualifies as a dependent).

The maximum premium that can be charged is up to 102% of the cost to obtain coverage under the employer's group health plan. Premium is paid to the former employer.

f. Termination of Coverage

- If the former employer stops offering group health coverage to its employees;
- For failing to pay a premium on time;
- When a former spouse or dependent child becomes enrolled in Medicare; or
- For HMO coverage, right to continued coverage may be lost if the covered spouse or dependent child moves outside the HMO approved service area.

g. Notice Requirements

The employer must inform the former spouse or covered dependent child within 14 days after termination or layoff of the right to elect to continue coverage. Notice to a former spouse and dependent children is sent to their last known address.

Notice must include information regarding:

- the right to elect to continue the coverage;
- amounts employees must pay monthly to employers to continue coverage,
- methods to pay and addresses where to send premium payments, and
- premium payment due dates.

Coverage of Current Spouse and Children (Employee Medicare Eligibility; Dependent Reaching Maximum Age under Policy)

a. Employers Affected

Fully insured employers with two or more employees as well as self-insured plans offered by local government units. Does not apply to self-insured non-governmental employers.

A small employer plan[3] must include the continuation of coverage provisions required by COBRA and by state law.

In some circumstances, Minnesota law provides for a longer continuation time than does COBRA.

b. Eligibility for Coverage

Any spouse or covered dependent child whose coverage terminates due to a covered reason are eligible for continuation coverage.

c. Qualifying Events

- Employee becomes covered by Medicare; or
- Loss of dependent child status.

d. Election Requirements

The spouse or covered dependent child has 60 days within which to electcoverage. The 60-day period begins to run on the date group coverage terminates,or on the date upon which the election notice is received, whichever is later.

e. Duration of Coverage/Premiums

Earliest of:

- 36 months;
- coverage under another group health plan; or
- date coverage would otherwise term under the policy.

The maximum premium that can be charged is up to 102% of the cost to obtain coverage under the employer's group health plan. Premium is paid to the former employer.

f. Termination of Coverage

- If the former employer stops offering group health coverage to its employees;
- For failing to pay a premium on time;
- When a spouse or covered dependent child becomes enrolled in Medicare;
- For HMO coverage, right to continued coverage may be lost if the continuee moves outside the HMO approved service area.

[3] *Ibid.*

g. Notice Requirements

The employer must inform the spouse or covered dependent child within 14 days after the event of the right to elect to continue coverage. Notice to a spouse and dependent children is sent to their last known address.

Notice must include information regarding:

- the right to elect to continue the coverage;
- amounts employees must pay monthly to employers to continue coverage,
- methods to pay and addresses where to send premium payments, and
- premium payment due dates.

If termination of coverage is due to employees' dependents reaching group policies' limiting age, notice must include information about provisions for disabled dependents to remain covered under group policies.

Provision of Benefits for Disabled Employees

a. Employers Affected

Fully insured employers with two or more employees as well as self-insured plans offered by local government units. Does not apply to self-insured non-governmental employers.

A small employer plan[4] must include the continuation of coverage provisions required by COBRA and by state law.

In some circumstances, Minnesota law provides for a longer continuation time than does COBRA.

b. Eligibility for Coverage

The disabled employee's participation in the group health plan continues, including coverage for eligible spouse and dependents.

c. Qualifying Events

Covered employee who becomes totally disabled while employed by the employer.

d. Election Requirements

None specified.

e. Duration of Coverage/Premiums

None specified. Presumably Medicare entitlement or recovery.

[4] *Ibid.*

If the employee is required to pay all or any part of the premium for the extension of coverage, payment shall be made to the employer, by the employee.

f. Termination of Coverage

None specified.

g. Notice Requirements

None specified.

See the attached link for information from the Minnesota Department of Health - https://www.health.state.mn.us/facilities/insurance/managedcare/faq/cobra.html.

25. Mississippi

a. Employers Affected

Public and private employers with fully insured group hospital, surgical, and medical policies.

b. Eligibility for Coverage

An employee, spouse, or dependent whose coverage under the current employer's group hospital, surgical, or medical policy has been terminated and who has been covered continuously under the applicable policy for the three months immediately before termination of his or her group coverage is eligible for continuation coverage. Continuation coverage does not apply to dental, vision, or other benefit coverage. Employers are not required to provide coverage for individuals who: (1) are eligible for COBRA; (2) are entitled to Medicare; (3) are eligible for other hospital, surgical, or medical group coverage within 31 days after termination of coverage; (4) if the individual's coverage ended because he or she committed fraud or failed to pay his or her part of the required premiums.

c. Qualifying Events

An employee, spouse, or dependent may elect continuation coverage if coverage is terminated because of the employee's termination of employment or loss of membership in any employee class eligible for coverage. Spouses and dependents may also elect continuation coverage based on loss of coverage due to the death of the employee, divorce, employee entitlement to Medicare, and reaching the dependent age limit.

d. Election Requirements

The individual must make a written election of continuation to insurers on forms provided by the insurer on or before the date group coverage terminates. Employees, spouses, and dependents must notify insurers of death of employee, divorce, or dependent reaching limiting age and must elect continuation coverage within 30 days after receiving notice of the right to continue coverage.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to twelve months. The initial premium must be paid to the insurer on or before the group policy coverage terminates. Subsequent payments must be made monthly and in advance of due dates.

f. Termination of Coverage

The right to continuation coverage ends on the earliest of (1) twelve months after the qualifying event occurs; (2) when the individual becomes eligible for other insured or uninsured group coverage; (3) in the event of premium nonpayment, at the end of the period when the last premium payment was paid; (4) the date that the group policy is terminated; (5) the date on which an enrolled member resides outside the health maintenance organization's service area; (6) the date that the surviving spouse or formerspouse remarries and is covered under another group health plan that does not include a pre-existing condition; or (7) when employee, spouse, or dependent becomes entitled to Medicare.

g. Notice Requirements

In the event of 1) employee's death; 2) dependent's ineligibility for group coverage; and 3) employee's divorce, the insurer must provide notice of the right to continue coverage within fourteen (14) days to eligible spouse and dependents.

For more information regarding Mississippi state continuation, see MS Code Section 83-9-51 or contact the Mississippi Department of Insurance at http://www.mid.ms.gov/.

26. Missouri

Note: The Missouri continuation coverage statute is designed to mirror the federal COBRA law. However, both the statute and information released by the Missouri Department of Insurance contain provisions that are not entirely consistent with COBRA (especially regarding eligibility for coverage and qualifying events). Therefore, it is important to discuss the topics listed below with your carrier to ensure that it is in agreement with the employer's approach.

a. Employers Affected

All public and private employers with less than 20 employees that provide fully insured group hospital, surgical, or major medical coverage.

b. Eligibility for Coverage

An employee, spouse, or dependent whose coverage under the current employer's group policy has been terminated is eligible for continuation coverage in the same manner as provided by COBRA.

c. Qualifying Events

An employee, spouse, or dependent may elect continuation coverage if coverage is terminated due to a COBRA qualifying event.

d. Election Requirements

In order to be eligible for continuation of coverage, the individual must make a written election of continuation coverage in the same manner as provided by COBRA.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for the time period specified by COBRA.

f. Termination of Coverage

The right to continuation coverage ends on the earliest of 1) the end of the maximum COBRA coverage period; or 2) before the end of the maximum COBRA coverage period, as specified by COBRA.

g. Notice Requirements

The employer must provide notice of continuation rights in the same manner as provided by COBRA.

See the attached link for information from the Missouri Department of Insurance - http://insurance.mo.gov/index.php.

Click here for a link to Missouri's state continuation law - Missouri Revisor of Statutes - Revised Statutes of Missouri, RSMo Section 376.428

27. Montana

a. Employers Affected

Employers maintaining a group insurance policy are affected.

b. Eligibility for Coverage

A person covered by a group insurance policy is eligible. Dependents ofa covered person are also eligible for continuation coverage, in the event of the death of the covered person.

c. Qualifying Events

Continuation coverage is triggered when a covered person's regular work schedule is reducedto less than the minimum time required to qualify for membership in the group or upon the death of the covered person.

d. Election Requirements

N/A

e. Duration of Coverage/Premiums

Coverage generally lasts for one year. The premium charged must be equal to that charged other members of the group of the same risk class.

f. Termination of Coverage

N/A

g. Notice Requirements

N/A

For more information regarding Montana state continuation coverage, contact the Montana Commission of Securities and Insurance at 800-332-6148 or on the web at: http://www.csi.mt.gov/.

28. Nebraska

a. Employers Affected

All public and private employers with less than 20 employees and fully insured plans or health maintenance organizations.

b. Eligibility for Coverage

An employee (or spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated due to involuntary termination of the employee's employment, except for gross misconduct, is eligible for continuation coverage. An employee's spouse and dependents are also eligible for continuation coverage if coverage is lost due to the death of the employee.

c. Qualifying Events

An employee, spouse, or dependent may elect continuation coverage if coverage is terminated because of the employee's involuntary termination of employment, other than for gross misconduct. An employee's spouse or dependent may elect continuation coverage if coverage is terminated due to employee's death.

d. Election Requirements

A former employee electing continuation coverage must return any applicable election forms and send the first monthly premium to the insurer or health maintenance organization, as appropriate, by certified mail, return receipt requested, within 10 days after receipt of his or her former employer's election notice.

An employee's surviving spouse and dependent children must return any applicable election forms and send the first monthly premiums to the insurer or health maintenance organization, as appropriate, by certified mail, return receipt requested, within 31 days after the date of the employee's death.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of up to six months

after an involuntary termination of employment or twelve months after the death of an employee. Employers may charge up to 102% of the applicable group rate.

f. Termination of Coverage

The right to continuation coverage ends on the earliest of (1) Six (or twelve months for surviving spouses and dependents) months after the qualifying event occurs; (2) when the individual becomes eligible for another group health plan; (3) in the event of premium nonpayment, at the end of the period when the last premium payment was paid; (4) the date that the group policy is terminated without being replaced; (5) when the group plan is converted to an individual or family plan; or (6) in the case of a surviving spouse, when the surviving spouse remarries or becomes eligible for Medicare or Medicaid.

g. Notice Requirements

Employers must send a notice of election requirements within ten days after the involuntary termination of employment. The employer must send the notice by certified mail, return receipt requested, to the employee's home addresses as contained in employer's records. The notice must contain:

- information on the right to continue group coverage;
- any applicable election forms;
- a statement of the amounts of monthly premium payments; and
- a statement of the manner, time, and name of person to whom an election form and monthly premiums must be submitted.

With regard to a spouse and/or a dependent, who is eligible for continuation coverage based on the death of an employee, an employer must send a notice to the employee's surviving spouses or surviving dependent children (if there is no surviving spouse) not later than 10 working days after employee's death. The notice must be sent by certified mail, return receipt requested, to surviving spouse or surviving dependent children's home address as contained in the employer's records. The notice must contain:

- information on rights of a surviving spouse or surviving dependent children to continue group coverage;
- any applicable election forms;
- a statement of the amounts of monthly premium payments; and
- a statement of the manner, time, and name of person to whom an election form and monthly premiums must be submitted.

For more information regarding Nebraska state continuation, contact the Nebraska Department of Insurance at http://www.doi.ne.gov/.

Click here for a link to an article from Nebraska's Department of Insurance entitled –

"Health Insurance – Making a Choice Following Loss of Employment" - ConsumerAlertHealthInsurance-MakingChoiceFollowingLossofJob.pdf (nebraska.gov).

29. Nevada

a. Employers Affected

Employers maintaining group coverage issued for delivery in Nevada must provide continuation coverage in the event of an employee's total disability. Public and private employers with fewer than 20 employees covered under group health insurance policies must provide more comprehensive coverage.

b. Eligibility for Coverage

For coverage due to total disability, there are no provisions.

For small employer coverage, employees, spouses and dependent children covered by the group coverage at least 12 consecutive months prior to termination of group coverage are eligible. Children legally adopted during a period of continuation coverage are also eligible.

c. Qualifying Events

For total disability coverage, coverage is triggered when the employee is unable to work due to his total disability.

For small employer coverage, coverage is triggered by (1) an employee's involuntary termination of employment (except for gross misconduct) or reduction in hours; or (2) with respect to the employee's spouse and dependents, the employee's death or divorce.

d. Election Requirements

Total disability: N/A

For small employers, employees, their spouses, and employees' dependents must notify small employers within 60 days after they are eligible for continuation coverage.

e. Duration of Coverage/Premiums

Coverage due to total disability lasts for 12 months. Coverage for employees lasts for 18 months, and 36 months for divorced spouses, surviving spouses and children who have lost dependent status.

For coverage due to total disability, there are no provisions for premiums. For small employer coverage, premiums may not exceed 110% of the group rate.

f. Termination of Coverage

Coverage due to total disability terminates upon the occurrence of the earliest of (1) 12 months; (2) termination of employment; (3) coverage under another group plan; or (4) termination of group coverage.

Small employer coverage terminates upon the occurrence of the earliest of (1) end of 18 or 36 month period (as applicable); (2) termination of group coverage; (3) failure to pay required premium; (4) coverage under another group policy; (5) eligibility for Medicare; or (6) divorced or surviving spouse remarries and becomes eligible for coverage under new spouse's group coverage.

g. Notice Requirements

For coverage due to total disability, there are no provisions.

For small employer coverage, employees (or spouses) must notify employers within 60 days of eligibility. Employer must provide information regarding election requirements within 14 days of receipt of notice from the employee.

For more information contact the Nevada Division of Insurance at 702-486-4009 or on the web at: http://doi.nv.gov/.

30. New Hampshire

a. Employers Affected

All Hew Hampshire employers offering a fully-insured plan, including employers subject to COBRA. Self-funded church plans and self-insured governmental plans are not subject to New Hampshire state continuation requirements.

b. Eligibility for Coverage

In general, employees, their spouses, and their dependents who are New Hampshire residents must be permitted to elect continuation coverage upon experiencing a qualifying event.

c. Qualifying Events

Qualifying events include:

- the group plan is terminated,
- group coverage terminates due to a labor dispute,
- termination of employment for any reason other than the employee's termination of employment for gross misconduct,
- the employee, spouse, or dependent becomes disabled within 60 days of termination of group coverage,
- the employee's death
- the employee's divorce or legally separation
- the employer declares bankruptcy, or
- the dependent ceases to be an eligible dependent under the plan.

d. Election Requirements

An individual electing continuation coverage must notify the carrier in writing, and must provide a copy of the notice to the employer or plan administrator, within 45 days of the date of the notice.

e. Duration of Coverage/Premiums

The duration of continuation coverage varies depending on the qualifying event:

- 39 weeks: termination of all group health coverage;
- 12 months: termination of coverage due to labor disputes;
- 18 months: termination of employment (except for gross misconduct);
- 29 months: employees, their spouses or employees' dependents become disabled within 60 days after group plan coverage terminates; or
- 36 months: employees, their spouses or employees' dependents lose group plan coverage because of employee death, divorce or legal separation, employer bankruptcy or employees' dependents ceasing to be eligible dependents under the plan.

Note that legally separated, divorced or surviving spouses who are age 55 or older may continue coverage until they become covered under another group health plan or become eligible for Medicare.

The premium rate must not exceed 102% of the group premium amount.

f. Termination of Coverage

Continued coverage may terminate the first day of the month after an individual becomes eligible under another group plan, the date of the first Medicare open enrollment period for Medicare-eligible individual, the date the group plan terminates, or when individuals fail to timely pay premiums. In the case of disabled persons, coverage may terminate on the first day of the month that is more than 30 days after the date of a final determination that the person is no longer disabled.

Failure to make a timely remittance of premium payment is grounds for termination.

A 30-day grace period for payment of the premium shall be provided. Theindividual will be provided with a notice within 15 days of the date of termination that the coverage will be cancelled if the premium is not paid.

g. Notice Requirements

Employers or group plan administrators must notify group plan insurance issuers when employees, their spouses or employees' dependents lose group plan coverage.

Group plan insurance issuers must notify employees and their spouses and dependents about their right to elect continuation coverage within 30 days from the date notice is received from employers or group plan administrators. These notices must be mailed to the last known addresses of the employee, spouse and dependents and include the premium amounts required to continue coverage, indicate how premiums are paid, describe procedures for electing continuation coverage, and specify at least a 45 day election period from the date of notice.

For more information on New Hampshire Mini-COBRA coverage, contact the New

Hampshire Insurance Department at: 800-852-3416 or on the web at: http://www.nh.gov/insurance/consumers/documents/nh-state-cont.pdf.

31. New Jersey

a. Employers Affected

Small employers with 2-50 employees maintaining group health policies delivered, issued, renewed or continued in New Jersey not subject to federal COBRA are affected. This requirement includes church plans with 2-50 employees. State continuation coverage requirements apply only to medical and hospitalization coverage.

b. Eligibility for Coverage

Employees and dependents covered by a group health plan (excluding standalone dental and vision) on the day before a qualifying event are eligible for State continuation.

c. Qualifying Events

An employee and his or her dependents enrolled in the employer's health plan are eligible for continuation coverage in the event of the employee's termination other than for cause or reduction in hours to below 25 hours per week. Spouses and dependent children are also eligible in the event of death of or divorce from the employee or upon ceasing to be an eligible dependent (e.g., due to age or loss of student status). A former civil union partner may election continuation coverage in the same manner as a former spouse upon dissolution of a civil union. Additionally, the right to continuation coverage is triggered for an employee and eligible dependents when group coverage would otherwise terminate due to the employee's total disability.

d. Election Requirements

Written election of continuation coverage must be made within 30 days of a qualifying event. The first premium is due within 30 days of making a continuation election; no premium payment is due before the 30th day after the day on which the covered employee made the initial election for continuation coverage. An employer cannot require the first premium to be paid when the election is made.

e. Duration of Coverage/Premiums

The New Jersey continuation law provides continuation coverage up to 18 months for employees in the event of termination of employment or reduction in work hours. The duration of continuation coverage is 36 months for a spouse or dependent child in the event of the death of the employee or divorce of the employee for the spouse, or for a dependent child that ceases to be a dependent child under the terms of the plan. An employee with a disability determination under the Social Security Act is eligible to continue for up to 29 months.

The premium charged must not be more than 102% of the group rate in effect on

the due date of each payment. Employers may charge 150% of the total premium rate for months 19-29 for those who extend coverage to 29 months due to disability as defined by the Social Security Act.

f. Termination of Coverage

Continuation coverage of an employee (and spouses and dependents) will terminate on the earlier of: (1) the date the employer ceases to provide any group health plan; (2) the date coverage ceases due to failure to make timely premium payments; or (3) the date after the date of election on which the qualified beneficiary first becomes covered under a similar group health plan or entitled to Medicare.

g. Notice Requirements

Notice of the continuation privilege must be included in each certificate of coverage and by the employer at the time of the qualifying event. The notice must include a statement that the employee may elect to continue under the group policy for up to 18 months from the qualifying event; the employee has 30 days from the date of the qualifying event to elect continuation coverage; the amount of the premium, to whom is should be sent and that the required premium payment shall not exceed 102% of the premium paid for similarly situated covered persons, or 150% for an employee that has been determined to have been disabled under the Social Security Act; the monthly premium due date; and a statement that the first premium payment is due within 30 days of the date of the written election. (Note that ERISA preempts the portion of New Jersey's continuation law that requires insurers to notify ERISA plan participants of their state continuation rights at the commencement of coverage.) There is no obligation to provide a notice to covered dependents.

For more information regarding New Jersey state continuation coverage and FAQs, see Advisory Bulletin 04-SEH-02. You can also contact the New Jersey Department of Banking and Insurance at 609-292-7272 or on the web at: https://www.state.nj.us/dobi/aboutdobi.htm.

32. New Mexico

a. Employers Affected

Employers maintaining group health policies issued for delivery in New Mexico are affected.

b. Eligibility for Coverage

Terminated employees and their family members are eligible for coverage, as are surviving spouses of deceased employees, and former spouses of employees.

If a policy specifies that coverage is to be terminated upon a dependent's attainment of a specified age, the attainment of such age will not operate to terminate the coverage of a dependent who, is and continues to be both incapable of self-sustaining employment by reason of mental or physical disability and who

is dependent upon the covered employee for support and maintenance. Proof of the dependent's incapacity and dependency must be furnished to the insurer within 31 days of the dependent attaining the specified age and subsequently as may be required by the insurer, but not more frequently than annually after the 2 year period following the dependent's attainment of the specified age.

c. Qualifying Events

Coverage is triggered upon the termination of employment of the covered employee.

d. Election Requirements

Employees, their spouses, and employees' dependents must pay initial premiums to continue group policy coverage within 30 days after they receive notice of continuation coverage rights.

e. Duration of Coverage/Premiums

Continuation coverage lasts for six months after the termination of employment.

Policy premiums must be provided at a "reasonable, nondiscriminatory rate."

f. Termination of Coverage

Coverage terminates upon a failure to make a timely premium payment, and is limited where the person is eligible for Medicare.

g. Notice Requirements

At the time coverage begins, the insurer must provide a summary of the policy's continuation provisions to each adult family member covered. Then, when an employee terminates employment, the insurer must give the employee written notice of the policy's continuation provisions.

For more information, contact the New Mexico Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, N.M. 87504; 855-427-5674 or on the web at: http://www.osi.state.nm.us/.

33. New York

a. Employers Affected

Employers maintaining insured group health policies including employers that are not subject to federal COBRA are subject to New York continuation requirements. The state law offers extended eligibility for COBRA qualified beneficiaries continuing coverage under an insured group plan issued in the state of New York through an employer of any size. Self-insured medical plans, stand-alone dental and vision plans, prescription only, accident only, and specified disease plans are not subject to New York continuation coverage requirements.

b. Eligibility for Coverage

An employee, spouse or dependent child of a covered employee is generally

eligible if, on the day before a qualifying event, he or she is covered under a group health plan maintained by an employer.

c. Qualifying Events

Qualifying events for covered employees, spouses and dependents include loss of health insurance coverage due to: (1) termination of employment (for any reason) of a covered employee's employment; (2) reduction in a covered employee's hours; (3) a covered employee's transition between jobs or employment classes; (4) death of a covered employee; (5) divorce or legal separation from a covered employee; (6) a dependent child's loss of dependent status under the plan and; (7) an employee's enrollment in Medicare.

d. Election Requirements

An individual must elect continuation coverage in writing within the 60 day period following the later of (1) the date the qualified beneficiary's group coverage terminates, or (2) the date the qualified beneficiary is sent written notice by first class mail of his or her continuation of benefits coverage rights.

e. Duration of Coverage/Premiums

Coverage generally lasts for up to 36 months after group coverage terminates. Qualified beneficiaries who were entitled to 18 months of federal COBRA coverage and have exhausted those 18 months may continue coverage for up to an additional 18 months following the exhaustion of their federal COBRA coverage period, for a total of not more than 36 months. Qualified beneficiaries who are eligible under federal COBRA for 29 months (due to a disability extension) may continue coverage for an additional 7 months, for a total of up to 36 months. Coverage may end before the maximum duration under circumstances described in section f., below. The premium must not be more than 102% of the group rate applicable on the due date of each payment.

f. Termination of Coverage

Coverage may terminate before 36 months due to the following reasons: (1) timely premium payment is not made to the plan; (2) the employer ceases to maintain any group health plan (including successor plans); (3) the qualified beneficiary becomes covered under any other group health plan that is not maintained by the employer, even if that other coverage is less comprehensive than COBRA or continuation coverage; or (4) the qualified beneficiary becomes entitled to Medicare benefits.

g. Notice Requirements

A notification of continuation rights must be included in each certificate of coverage. Within 14 days of a qualifying event (or receiving notice of a qualifying event from an employee), an employer must notify qualified beneficiaries of their rights to continue coverage.

For more information regarding New York state continuation coverage, refer to these FAQs and this page. You can also contact the New York State Department of Financial Services at 212-480-6400 or on the web at: https://www.dfs.ny.gov/.

34. North Carolina

a. Employers Affected

Employers that maintain group health policies issued for delivery in North Carolina and not subject to federal COBRA are affected.

b. Eligibility for Coverage

Employees and their dependents are eligible for continuation of coverage if they have been covered under the group plan for the three consecutive months that immediately precede the date of termination from the employer's group policy A person who becomes eligible for coverage under another group plan within 31 days immediately following the date of termination of coverage from the employer's group policy or whose coverage was terminated due to failure to pay premiums is not eligible.

Hospital, surgical or major medical benefits must be offered under North Carolina continuation laws. Dental, vision care and prescription drug benefits are not subject to North Carolina continuation guidelines, if offered separately.

c. Qualifying Events

Coverage is triggered upon termination of active employment or termination of membership in an eligible class or classes under the policy.

d. Election Requirements

Covered individuals have 60 days from the date of termination or loss of eligibility to elect continuation coverage.

e. Duration of Coverage/Premiums

Coverage lasts for up to 18 months from the date group coverage is terminated. The premium may not exceed 102% of the full group rate for the insurance applicable under the group policy on the due date of each payment. All premiums required to bring the coverage current must be paid to the employer, upon the election to continue coverage. The coverage shall be reinstated retroactive to the date of termination or loss of eligibility. All subsequent continuation premiums must be paid to the employer in advance. There is no grace period for premium payments, therefore, monthly premiums must be paid on or before each due date.

f. Termination of Coverage

Coverage terminates upon the earliest of (1) termination of the group policy (unless the employer replaces it with another group policy) or termination of participation in a multiple employer plan, (2) 18 months, (3) failure to pay premiums, or (4) eligibility for another group health plan.

g. Notice Requirements

A notification of the right to continue group health coverage must be included in each certification of coverage. Notification may also be included on insurance identification cards or may be given by the employer, orally or in writing as a part of the exit process from the employment.

For more information, please refer to this webpage: https://www.ncdoi.gov/documents/consumer/publications/health-insurance-continuation-rights-after-losing-employment/download, contact the North Carolina Department of Insurance at 855-408-1212, or visit https://www.ncdoi.gov/.

35. North Dakota

a. Employers Affected

Applicable to all insurance policies and certificates and subscriber contracts issued or provided by an insurance company, health maintenance organization, or a nonprofit service corporation on a group or group-type basis covering persons as employees of employers or as members of unions or associations that are not subject to federal COBRA law.

b. Eligibility for Coverage

Employees, their spouse and their dependent children who would otherwise lose coverage due to termination of either employment or group membership.

To be eligible for continuation coverage, members must have been covered by the group plan for the three months before the termination of coverage.

Individuals who are covered by Medicare or other insured or self-insured health plan are not eligible for continuation coverage unless the person was covered by the other health plan immediately prior to the termination.

Continuation benefits do not have to include vision, dental or prescription drug coverage.

c. Qualifying Events

Termination of either employment or group membership, or divorce.

d. Election Requirements

Individuals must request continuation coverage in writing within 10 days following the later of the date of:

- termination or:
- the notice of continuation rights by the employer or group policyholder.

The employee or member may not elect continuation more than thirty-one days after the date of termination.

Individuals must pay the first premium, however, within 31 days of the loss of coverage. Eligible former spouses must apply for coverage and pay the first

premium within 30 days of the coverage loss.

e. Duration of Coverage/Premiums

- **Termination of Employment:** Group health policies must continuation coverage for up to 39 weeks for employees and their dependents who would otherwise lose coverage due to termination of either employment or group membership.
- **Divorce:** Former spouses can continue group health coverage for themselves and their dependent children for up to 36 months or until the former spouse remarries, whichever is earlier, if the divorce decree requires the employee to continue to provide health insurance for the former spouse and dependents.

Insurers may not charge more than the actual cost of the coverage, and must include a notice explaining these continuation rights in each certificate of coverage.

For divorced spouses, insurers may charge 102 percent of the actual cost of coverage.

f. Termination of Coverage

Coverage continued on the basis of termination of employment terminates:

- After 39 weeks
- If timely payment of premium has not been received
- If the employer ceases to offer group health benefits
- Becomes entitled to coverage under another group health plan

Coverage continued on the basis of divorce terminates:

- After 36 months
- If timely payment of premium has not been received
- If the employer ceases to offer group health benefits
- Becomes entitled to coverage under another group health plan
- Former spouse remarries

g. Notice Requirements

Employers must include a notice explaining these continuation rights in each certificate of coverage.

See the attached link for FAQs from the North Dakota Insurance Department - https://www.nd.gov/ndins/health-faq

Click on the following link for North Dakota's State Continuation code - https://www.lawserver.com/law/state/north-dakota/nd-code/north_dakota_code_26-1_36_23

36. Ohio

The state of Ohio has two different insurance statutes relating to group health coverage

continuation:

- General COBRA continuation (same as federal COBRA)
- Continuation of coverage benefits for certain Military Reservists

General COBRA

a. Employers Affected

All employers providing group insurance not covered by Federal COBRA. Applies to a self-insured plan unless preempted under federal law. Continuation need not include dental, vision care, or any other benefits provided under the policy in addition to its hospital, surgical, or major medical benefits.

See extension of coverage for military reservists called to active duty at the end of this summary.

b. Eligibility for Coverage

To be considered an eligible individual for continuation coverage:

- The employee has been continuously insured under a group policy (or under the policy and any prior similar group coverage replaced by the policy), during the entire three-month period preceding the termination of the employee's employment,
- The employee did not voluntarily terminate the employee's employment and the termination of employment is not a result of any gross misconduct on the part of the employee,
- The employee is not, and does not become, covered by or eligible for coverage by Medicare,
- The employee is not, and does not become, covered by or eligible for coverage by any other insured or uninsured group health plan other than a plan also covering the individual immediately prior to such termination.

In addition, individuals requesting coverage may not be covered by or eligible for Medicare.

c. Qualifying Events

Employment or membership termination.

d. Election Requirements

Employees must elect coverage in writing and pay the first premium no later than the earliest of the following dates:

- 31 days after coverage otherwise would end;
- 10 days after coverage otherwise would end if the employer notified the employee before the termination date; or
- 10 days after the employer notified the employee if the notice was given after the date coverage otherwise would end.

e. Duration of Coverage/Premiums

Group health policies must allow continuation coverage for up to 12 months.

The amount of the monthly premium may not exceed the cost of coverage under the group policy.

f. Termination of Coverage

Continuation coverage may end early if:

- the employee becomes eligible for or covered by Medicare or other health coverage (excluding TRICARE);
- the employee fails to pay premiums in a timely manner; or
- the group health plan is terminated.

g. Notice Requirements

Employers must notify members of their continuation rights when the employer notifies the employee of a job termination.

Military Reservists

a. Employers Affected

Employers must permit employees who are members of reserve components of the U.S. or Ohio National Guard and reservists' spouses and dependents to continue group policy coverage for 18 months after group policy coverage terminates because reservists are called for or ordered to active duty.

b. Eligibility for Coverage

Reservists, their spouses and reservists' dependents can extend continuation coverage for up to 36 months if any of the following events occur during the initial 18 month continuation coverage period:

- reservists die,
- reservists and their spouses separate or divorce, or
- reservists' dependent children reach group policies' limiting age.

c. Qualifying Events

Reservists, their spouses and reservists' dependents can extend continuation coverage for up to 36 months if any of the following events occur during the initial 18 month continuation coverage period:

- reservists die,
- reservists and their spouses separate or divorce, or
- reservists' dependent children reach group policies' limiting age..

d. Election Requirements

Reservists, their spouses and reservists' dependents must provide written elections of continuation coverage and pay initial premiums to employers within 31

days after reservists' group policy coverage terminates.

e. Duration of Coverage/Premiums

Premiums for continuation coverage for reservists called for or ordered to active duty for more than 31 days cannot exceed 102 percent of group rates. Premiums for continuation coverage for reservists called for or ordered to active duty for less than 31 days cannot be more than premiums paid under group policies.

f. Termination of Coverage

Employers can terminate continuation coverage for reservists, their spouses and dependents:

- at the end of the 18 or 36 month coverage period, as applicable;
- if reservists, their spouses or dependents are covered by other group health plans that do not contain pre-existing condition exclusions or limitations (does not include TRICARE);
- if reservists, their spouses or reservists' dependents fail to make timely premium payments; or
- if employers cancel and do not replace all group health plans.

g. Notice Requirements

Employers must notify employees at the date of hire and notify reservists about their right to continuation coverage when reservists are called or ordered to active duty.

Click on the following for the updated link for COBRA information from the Ohio Department of Insurance - https://insurance.ohio.gov/wps/portal/gov/odi/consumers/health/cobra-information

37. Oklahoma

a. Employers Affected

All public and private employers with fewer than 20 employees and a group policy providing hospital, medical or surgical, or Christian Science care and treatment expense benefits; or contract of hospital or medical service or indemnity; or prepaid health plan or health maintenance organization subscriber contract.

b. Eligibility for Coverage

An employee (spouse, or dependent of such an employee) whose coverage under the current employer’s group policy has been terminated for any reason other than for employee’s termination due to gross misconduct, is eligible for continuation coverage.

c. Qualifying Events

An employee, spouse, or dependent may elect continuation coverage if coverage is terminated for any reason, except for employee’s termination due to gross misconduct or termination of the employer’s group policy.

d. Election Requirements

Terminated employees must elect continuation coverage in writing no later than 31 days after the date the employee received notice of right to elect continuation coverage.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of at least 63 days after the termination of group policy coverage. For employees, spouses, or employee's dependent covered for at least six months prior to the qualifying event, continuation coverage must be provided for the remaining policy period. Employees, spouses, and dependents that have submitted claims and are disabled are eligible for the extension of benefits for the remaining policy period, or for not less than three months if policy provides basic coverage, or six months if coverage provides major medical. The premium charged must be the same amount as though termination had not occurred.

f. Termination of Coverage

The right to continuation coverage ends on the earliest of (1) when the individual becomes eligible for another group health plan; (2) upon cancelation of employer's group policies without replacement, and (3) upon failure to pay timely premiums.

g. Notice Requirements

Group policy issuers must provide terminated employees with written notice of their right to elect to continue coverage within 30 days after issuers receive notice from the employers that employees' coverage has terminated.

For more information regarding Oklahoma state continuation, see 36 OK Stat Section 36-4509 or contact the Oklahoma Insurance Department at http://www.ok.gov/oid/.

38. Oregon

a. Employers Affected

Employers with fewer than 20 employees maintaining group health plans must provide continuation coverage for employees. This applies both to coverage under a plan that is "grandfathered" for purposes of the Affordable Care Act and to a policy providing coverage for one or more of the essential health benefits. Employers with 20 or more employees maintaining group health plans must provide continuation coverage for surviving or divorced spouses age 55 or older.

b. Eligibility for Coverage

Covered persons and their eligible dependents continuously covered under the group policy for three months prior to the occurrence of a qualifying event are eligible. Persons eligible for Medicare or any other coverage are not eligible.

c. Qualifying Events

Coverage is triggered by the covered person's termination of employment,

reduction in hours, eligibility for Medicare, or death; or, with respect to a qualified beneficiary, loss of dependent child status. For surviving and divorced spouses, coverage is triggered by the divorce or death of the employee.

d. Election Requirements

In the event the insurer terminates coverage, continuation coverage must be elected in writing within the time prescribed by the insurer, except that the insurer may not require a request to be submitted less than 10 days after the later of the date of the qualifying event or the required notice from the insurer.

e. Duration of Coverage/Premiums

Coverage lasts for nine months. No set duration period is provided for coverage for divorced or surviving spouses aged 55 or older, but see the "Termination of Coverage" section below.

For a covered person or qualified beneficiary, the premium amount may not exceed 100 percent of the group rate. For divorced and surviving spouses age 55 or older, the premium amount may not exceed 102 percent of the group rate.

f. Termination of Coverage

For covered persons and their qualified beneficiaries, coverage will terminate prior to the end of the nine month period upon the occurrence of (1) failure to timely pay premiums, (2) eligibility for Medicare or other coverage or (3) the date the policy is terminated, if replacement coverage is not obtained by the policyholder.

For divorced or surviving spouses age 55 or older, coverage terminates upon the occurrence of (1) failure to pay premium; (2) termination of group coverage; (3) eligibility for Medicare; (4) coverage under another group plan or (5) the date the divorced or surviving spouse remarries and becomes covered under another group plan.

g. Notice Requirements

With respect to coverage for terminated employees, the plan administrator has no notice requirements.

With respect to divorced or surviving spouses aged 55 or older, the plan administrator must provide written notice within 14 days of receiving notice from the employer.

If an insurer terminates coverage of a covered person or qualified beneficiary without providing replacement coverage, the insurer must provide written notice no later than 10 days after the insurer is notified of a qualifying event.

For more information, contact the Oregon Division of Insurance, 350 Winter St., N.E., Salem, Ore., 97301; 888-877-4894 or on the web at: http://www.oregon.gov/dcbs/insurance/Pages/index.aspx.

39. Pennsylvania

a. Employers Affected

Employers with 2-19 employees that sponsor insured health plans issued in Pennsylvania are subject to Pennsylvania mini-COBRA requirements. An insured church plan sponsored by an employer with 2-19 employees is subject to mini-COBRA in Pennsylvania.

b. Eligibility for Coverage

Continued coverage is available to a covered employee, spouse or eligible dependent continuously insured under the group policy during the entire three-month period ending with the termination of coverage. Persons covered or eligible for coverage under Medicare or other employer-provided group coverage as a dependent are not eligible.

c. Qualifying Events

A qualifying event is an event that would result in the loss of coverage for the covered employee or eligible dependent, including death of the covered employee, termination of employment (either voluntary or involuntary, but not for the employee's gross misconduct), reduction in hours, divorce or legal separation, eligibility for Medicare, dependent child ceasing to be dependent, or bankruptcy of the employer.

d. Election Requirements

The covered employee, spouse or eligible dependent must elect continued coverage within 30 days of receipt of notice. The insurer must be notified within 14 days of the employee's or eligible dependent's election.

e. Duration of Coverage/Premiums

Coverage generally lasts for nine months. The premium charged must not be more than 105% of the group rate in effect on the due date of each payment.

f. Termination of Coverage

Continuation coverage will terminate if the covered employee, spouse dependent becomes eligible for benefits under another group plan or Medicare, if timely premium payments are not made, if the group policy is terminated, or if the nine-month continuation period ends.

g. Notice Requirements

Notice of continuation rights must be provided by an employer to the covered employee within 30 days of the qualifying event. A model notice can be found here.

For more information regarding Pennsylvania state continuation coverage, see these

FAQs and the Pennsylvania Insurance Department's Mini-COBRA. You can also contact the Pennsylvania Insurance Department at 1-877-881-6388 or on the web at: http://www.insurance.pa.gov.

40. Rhode Island

a. Employers Affected

The Extended Benefits provision applies to employers with 2-19 employees who provide their employees with an insured group hospital, surgical, or medical plan.

b. Eligibility for Coverage

Covered employees, their dependents and spouses are eligible for continuation coverage. Divorced spouses of the covered employee are also eligible to the extent provided by the divorce decree. Employees who qualify for extended medical leave are also eligible to continue coverage.

c. Qualifying Events

An employee become eligible for Extended Benefits when the employee's group coverage terminates due to an employee's involuntary layoff, death of the covered employee or permanent reduction in the workforce (including the worksite ceasing to exist). Spouses and dependents become eligible for Extended Benefits upon the divorce or death of a health plan member providing family coverage. Employees who exhaust the extended benefits entitlement under an extended medical leave are also eligible to continue coverage under Rhode Island's Extended Benefits provision.

d. Election Requirements

The eligible individual may elect to continue group coverage within 30 days of the date group coverage terminates.

e. Duration of Coverage/Premiums

When group coverage ends due to the employee's termination of employment or death, the duration of coverage is the shorter of 18 months or the length of employment prior to termination. When group coverage ends due to the employee's divorce, coverage lasts for as long as the employee participates in the plan, until either (1) a time provided for in the divorce decree, (2) the remarriage of either party to the divorce or (3) the divorced spouse becomes eligible under another group plan. An employee on extended medical may continue coverage for up to 18 months, and if the extended medical leave continues, may transition to extended benefits for up to 18 months, for a total of up to 36 months.

The premium charged must be the same as in effect for members of the group plan (100%). If the group plan consists of 50 members or less, the employee electing continuation coverage must pay premiums directly to the group plan carrier. If the group plan consists of more than 50 members, the employee must

make payments directly to the former employer.

f. Termination of Coverage

Extended benefits continuation coverage will terminate upon after 18 months (or the length of employment, if shorter than 18 months), or when the covered employee or member becomes eligible for benefits under another group plan. Coverage for divorced spouses will terminate upon the remarriage of either spouse, when the employee ceases participation in the plan, or until the time provided by the divorce decree.

g. Notice Requirements

Employers must "post a conspicuous notice" to employees of their continuation coverage options.

For more information on Rhode Island Mini-COBRA coverage, contact the Office of the Health Insurance Commissioner at 401-462-9517 or on the web at: http://www.ohic.ri.gov/ohic-regulation.php.

41. South Carolina

a. Employers Affected

Employers that maintain fully insured group health policies issued for delivery in South Carolina and not subject to federal COBRA are affected. Employers offering self-funded plans, regardless of size, are not subject to South Carolina's State Continuation (mini-COBRA) law.

b. Eligibility for Coverage

Continuation is extended to employees or members continuously covered by the same employer's group policy for six continuous months.

Employees or members eligible for other group coverage providing similar benefits, Medicare, or federal COBRA are not eligible.

Continuation privileges are applicable to group policies which provide hospital, surgical or major medical expense insurance or any combination of these coverages. Policies which provide benefits for other than hospital, surgical, major medical, or which provide benefits for specific diseases or accidental injuries only are not subject to continuation privileges.

c. Qualifying Events

Continuation coverage is triggered when an employee or member's coverage under the group policy is terminated for any reason other than nonpayment of the required premium.

d. Election Requirements

The South Carolina continuation law contains no provisions related to elections.

e. Duration of Coverage/Premiums

Coverage lasts for the remaining days of the month in which the termination occurred plus six additional months. The employee must pay the entire cost of the active premium. All premiums required to bring the coverage current must be paid to the employer upon the election to continue coverage. The coverage shall be reinstated retroactive to the date of termination or loss of eligibility. All subsequent monthly continuation premiums must be paid to the employer in advance. There is no premium payment grace period after the due date.

f. Termination of Coverage

State Continuation will end on the earliest of the following dates:

- Six months after the beginning date of the first full month of coverage under state continuation
- The date ending the period for which the continuation participant last makes a premium payment
- The date the continuation participant becomes or is eligible to become covered for similar benefits under any form of group health coverage or Medicare; or
- The date the group policy is terminated

g. Notice Requirements

A notification of rights to continuation coverage must be included in each certificate of coverage. In addition, the employer must advise an employee upon termination of coverage of the right to continue insurance and must advise the employee of the amount of premium required and of the employee's responsibility to pay the premium each month before the date that the policy month begins.

Although not required, the employer may give written notice of the right to continue group health coverage. A sample notice is available here: https://www.doi.sc.gov/DocumentCenter/View/11353/2019-State-Continuationpdf

For more information contact the South Carolina Department of Insurance (803) 737-6160 or visit https://www.doi.sc.gov/.

42. South Dakota

South Dakota has two forms of continuation coverage:

- Traditional mini-COBRA
- Continuation of coverage where an employer ceases operations, cancels the group policy without notice or fails to remit premiums to the insurer resulting in

cancellation of the group policy. The provisions are listed below.

Mini-COBRA

a. Employers Affected

Insured and self-insured group plans of employers with less than 20 employees.

b. Eligibility for Coverage

South Dakota law mirrors the COBRA provision that an individual must have been covered under the plan at the time of the qualifying event.

c. Qualifying Events

- Employment or coverage termination
- The death of the employee or member
- Divorce or legal separation of employee
- A dependent ceases to be a qualified family member
- Any Medicare ineligible qualified beneficiary of a current employee
- The qualified beneficiary of an employee who is eligible for Medicare

d. Election Requirements

Any employee may exercise the right to continuation within thirty days of receipt of notice of termination of coverage of the group and upon payment of premiums from the date of termination.

Any insurer providing continuation must offer all eligible individuals the opportunity to decrease the benefits of the continued coverage. The options must include, at a minimum, coverage options otherwise available to employees or dependents who initially enrolled into the coverage if there is an option offering decreased coverage. A carrier may offer a standardized plan to all those eligible for continuation that contains similar benefits to the beneficiaries' prior coverage but at a higher deductible or other reduced benefit features.

e. Duration of Coverage/Premiums

Group health plans must allow covered employees and their dependents to continue coverage for up to 18 months if their group coverage ends because a covered employee ceases to be employed or the insurer terminates coverage. Certain exceptions exist. There is no probationary or waiting period.

The law mirrors the federal COBRA requirements regarding the 29-month disability extension.

The law mirrors the federal COBRA requirements regarding the 36-month qualifying events (except that the state law refers to Medicare eligibility) and having the same rights as similarly situated individuals.

Employees must pay no more than 102 percent of the premium for continuation coverage (or 150 percent after 18 months).

f. Termination of Coverage

Continuation coverage does not have to be offered under certain circumstances, including:

- the person is covered under similar individual or group benefits;
- similar benefits became available (after the election);
- over insured;
- fraud or material misrepresentation;
- unpaid premiums;
- all similar insurance policies in the state were cancelled;
- for cause, on the same basis the plan could terminate the coverage of a similarly situated active employee; and
- gross misconduct.

g. Notice Requirements

A notification of the continuation and conversion rights shall be included in each certificate of coverage. Employers must notify employees that their group coverage will be terminated.

Continuation of Coverage – Group Policy Cancellation

a. Employers Affected

All insured group plans of employers.

b. Eligibility for Coverage

Continuation is only available to an employee who has been continuously insured under the group policy or under any creditable coverage which it replaced during the entire six-month period ending with such termination.

c. Qualifying Events

Cancelation of coverage by the employer due to

- the employer ceasing operation and terminating the policy,
- the employer fails to make premium payments resulting in loss of coverage, or
- the employer cancels the insurance without notice.

d. Election Requirements

Any employee may exercise the right to continuation within thirty days of receipt of notice of termination of coverage of the group and upon payment of premiums from the date of termination.

Any insurer providing continuation must offer all eligible individuals the opportunity to decrease the benefits of the continued coverage. The options must include, at

a minimum, coverage options otherwise available to employees or dependents who initially enrolled into the coverage if there is an option offering decreased coverage. A carrier may offer a standardized plan to all those eligible for continuation that contains similar benefits to the beneficiaries' prior coverage but at a higher deductible or other reduced benefit features.

e. Duration of Coverage/Premiums

Group health plans must allow covered employees and their dependents to continue coverage for up to 12 months.

The premium for a continuation policy may not be greater than one hundred twenty-five percent of the group rate under which a person is covered.

f. Termination of Coverage

Continuation coverage does not have to be offered under certain circumstances, including:

- the person is covered under similar individual or group benefits;
- similar benefits became available under state or federal law; (after the election);
- over insurance resulting from other similar benefits available;
- fraud or material misrepresentation;
- unpaid premiums; and
- all similar insurance policies in the state were cancelled.

g. Notice Requirements

A notification of the continuation rights shall be included in each certificate of coverage.

The employer shall provide notice of any nonpayment of premiums or cancellation of coverage to employees as soon as reasonably possible but no later than ten days after the date of cancellation.

If the employer fails to notify the employees and their dependents of the termination of coverage within ten days, the employees and dependents may not be denied coverage by the insurer provided timely election is made after actual receipt of notice. Whether notice is provided or not, the election period for continuation of coverage may expire ninety days from the date the group coverage terminated.

Any premiums due for the continuation of coverage may be required to be paid by the employee or dependent as a condition of providing continuation coverage.

See the attached link for information from the South Dakota Department of Labor Regulation - https://dlr.sd.gov/insurance/cobra.aspx .

43. Tennessee

a. Employers Affected

Insured and self-insured group plans of employers with less than 20 employees.

b. Eligibility for Coverage

The employee must be continuously insured under a group policy (or under the policy and any prior similar group coverage replaced by the policy), during the entire three-month period preceding the termination of the employee's employment.

c. Qualifying Events

Loss of coverage for any reason (except termination of the group policy in its entirety, or termination of the insured class of which the employee was a member).

d. Election Requirements

Employees, their spouses and employees' dependents who continue group health benefits policy coverage must pay the full group premium monthly in advance, including any portion of premiums formerly paid by employers.

e. Duration of Coverage/Premium

Termination of Employment

Coverage may continue for the month in which coverage was terminated plus 3 additional policy months.

Other Loss of Coverage

Individuals who lost coverage due to divorce or death of the insured employee may continue coverage for the month in which coverage terminated plus 15 months.

Individuals pregnant at the time coverage was terminated may continue coverage for up to 6 months after the end of the pregnancy.

f. Termination of Coverage

- Medicare coverage.
- Failure to pay premium.
- Group coverage replaced within 31 days.

g. Notice Requirements

(none in the statute)

For more information, see TN Code Title 56 Insurance Section 56-7-2312 or contact the TN Department of Commerce and Insurance at 615-741-2241 or on the web at http://www.tn.gov/commerce/section/insurance.

44. Texas

a. Employers Affected

All public and private employers with two or more covered employees and fully insured hospital, surgical, or major medical plans.

b. Eligibility for Coverage

An employee (spouse or dependent of such an employee) whose coverage under the current employer's group policy has been terminated and who has been covered continuously under the applicable policy for at least three months is eligible for continuation coverage. An employee, spouse, or dependent eligible for or covered under Medicare is not eligible for state continuation.

Spouses and dependents whose coverage terminates due to severance of a family relationship (e.g., divorce) or retirement or death of the employee are eligible for continuation coverage if they have been covered under the plan for at least one year (or are infants if under one year of age).

c. Qualifying Events

An employee or dependent may elect continuation coverage if coverage is terminated because of (1) employee's termination of employment (other than involuntary termination for cause); (2) discontinuation of the employer's group policies (either in their entirety or for specific classes of insureds); or (for spouses and dependents only) the employee's death, retirement, or divorce.

d. Election Requirements

An individual has 60 days to elect, in writing, continuation coverage after termination of group coverage or the date they receive notice of continuation coverage. Employees, their spouses, or employees' dependents losing group policy coverage due to divorce must notify employers within 15 days after the date of divorce. When notices are received, employers or group policy insurers must notify employees' spouses and dependents of their continuation coverage options.

e. Duration of Coverage/Premiums

Employers with fewer than 20 employees must provide coverage for aperiod of up to nine months after the termination of group policy coverage.

Employers with 20 or more employees must provide continuation coverage for a period of up to six months after the terminated employee, spouse, or dependent has exhausted their COBRA rights.

Spouses and dependents whose coverage terminates due to divorce or retirement or death of the employee of an employer with fewer than twenty employees are eligible for up to three years of continuation coverage.

The initial premium payment must be made within 45 days after continuation coverage is elected. Subsequent premiums must be paid within 30 days after premium due dates. Employees, spouses, and dependents must pay premiums to employers or group policy insurers monthly. Premiums cannot exceed 102% of group rate premiums. However, employer cannot require spouses and dependents losing group policy coverage due to divorce or employee death or retirement to pay more than the premiums charged under the group policy plus a monthly administrative fee of up to $5.

f. Termination of Coverage

The right to continuation coverage ends nine months after the date employees, their spouses, and dependents elect continuation of coverage, if not eligible for federal COBRA.

Employers can terminate continuation coverage six months after the date employees, their spouses or dependents exhaust continuation coverage under federal COBRA.

Employers can also terminate continuation coverage on the earliest of when the individual (1) fails to make timely premium payments; (2) is eligible for or covered under Medicare; (3) is covered for similar benefits under other plans or programs; (4) is eligible for similar benefits under any other group insured or uninsured arrangement; (5) is eligible for or has similar benefits underany state or federal law (except for COBRA continuation coverage), or when (6) the group coverage terminates in its entirety.

Employers may terminate continuation coverage for an employee's spouse or dependents (when those individuals are eligible for Texas state continuation coverage based on divorce or the employee's death or retirement): (1) three years after the date of the divorce, death, or retirement; (2) upon the individual's failure to make a timely premium payment; or (3) if the individual obtains substantially similar coverage under another plan or program.

g. Notice Requirements

Carriers (or employers where responsibility is delegated by carriers) must provide a written notice of continuation rights to employees, spouses, and dependents no earlier than 60 days and no later than 30 days before group policy coverage terminates. If the carrier (or employer as applicable) is aware that group policy coverage terminates in less than30 days, notice must be provided to employees, their spouses, and dependents within five business days. Notice of continuation coverage must include:

- time period to elect continuation coverage;
- premium amounts to be paid to employers on a monthly basis;

- dates when employers or insurers must receive written elections and initial premiums;
- length of continuation coverage period;
- conversion options, if available; and
- enrollment and election forms.

In addition, the notice of continuation coverage must include the following statement in both English and Spanish at the end of the notice:

"If you have questions regarding your rights for conversion or continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number or other telephone number if no toll-free number is available). If you have additional questions, you may contact the Texas Department of Insurance, toll-free, at 800-252-3439 or visit this Internet site: http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing."

"Si usted tiene una pregunta sobre sus derechos bajo el proceso de convertir o de continuar el seguro de salud, hable (insert name of insurance company) por el numero (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Si usted necesita mas informacion, se puede comunicar con el Departamento de Seguros de Tejas por el numero gratis, 800-252-3439 o visite este sitio de Internet: http://www.tdi.texas.gov/pubs/consumer/cb005.html#losing. Se habla espanol."

For more information regarding Texas state continuation, see TX Insurance Code Section 1251.251-1251.255 and 1251.301-310, and TX Admin. Code Title 28 Section 21.5310-21.5314. Additional information is available at https://www.tdi.texas.gov/pubs/consumer/cb005.html#losing or by contacting the Texas Insurance Department at http://www.tdi.texas.gov.

45. Utah

a. Employers Affected

All employers providing group insurance.

b. Eligibility for Coverage

Any employee or covered dependent whose coverage under the current employer's group policy has been terminated and has been continuously covered under a group policy for a period of at least three months immediately prior to the termination of the coverage and is not eligible for federal COBRA.

c. Qualifying Events

Any employee or covered dependent whose coverage has been terminated due to termination of employment (voluntary or involuntary), retirement, death, divorce or legal separation, sabbatical, any disability, leave of absence, or reduction of hours.

d. Election Requirements

The terminated employee, spouse, dependent or surviving spouse must elect to extend coverage within 60 days of losing group coverage and send the required premium amount to the employer or insurer.

e. Duration of Coverage/Premiums

Employers must provide continuation coverage for a period of 12 months. The premium amount for extended group coverage may not exceed 102% of the group rate in effect for a group member, including an employer's contribution, if any, for a group insurance policy.

f. Termination of Coverage

Continuation coverage can be terminated prior to twelve months if (1) the covered employee establishes residence outside of Utah; (2) the covered employee moves out of the insurer's service area; (3) the covered employee fails to pay a required premium; (4) performs an act or practice that constitutes fraud in connection with the coverage; (5) makes an intentional misrepresentation of material fact under the terms of the coverage; (6) becomes eligible for similar coverage under another group policy; or (7) employer's coverage is terminated (unless the employer replaces coverage with similar coverage under another group policy, without interruption).

g. Notice Requirements

The employer must provide written notice of the right to continue group coverage no later than 30 days after the date the group coverage terminates. The notice must be sent by first class mail and the notice must include the manner, place, and time in which the payments shall be made. The notice must be mailed to the terminated employee's home address, the home address of a surviving spouse, if different from the employee's address, the guardian of any dependents address, if different from the insured's address, and the address of an ex-spouse if shown in the employer's records.

For more information on Utah's Mini-COBRA coverage, contact the Utah Insurance Department at 801-957-9200 or on the web at: http://insurance.utah.gov.

46. Vermont

a. Employers Affected

All employers offering group health policies (including dental policies) issued for delivery in Vermont and not subject to federal COBRA are affected.

b. Eligibility for Coverage

Employees (and their dependents) insured under the group policy on the date of the qualifying event are eligible for continuation coverage. Persons eligible for Medicare or for other group coverage are not eligible.

c. Qualifying Events

Coverage is triggered when a person's group coverage would terminate because of the termination of employment (except in cases of misconduct), reduction in hours that results in a loss of coverage, divorce or legal separation of the covered employee from the employee's spouse (or civil union partner), a dependent child ceasing to be a dependent child, or the death of the covered employee or member.

d. Election Requirements

Persons electing coverage must notify the insurer or policyholder in writing within 60 days of the date notice of continuation rights is received.

e. Duration of Coverage/Premiums

Coverage lasts for 18 months from the date group coverage terminates. Premiums must not be more than 102 percent of the group rate being charged on the due date of each payment.

f. Termination of Coverage

Coverage will terminate prior to the end of the 18-month period upon the occurrence of any of the following: (1) failure to timely pay the premium, (2) coverage by Medicare or other group coverage, or (3) termination of the group policy.

g. Notice Requirements

Each certificate of coverage must include notice of the right to continuation. Employers must also provide notice of continuation rights to employees within 30 days after a qualifying event.

For more information on Vermont continuation coverage, contact the Department of Financial Regulation at 1-800- 964-1784 (toll-free) or 802-828-3302, or visit:

https://dfr.vermont.gov/industry/insurance

or https://dfr.vermont.gov/sites/finreg/files/doc_library/dfr-health-insurance-continuation-of-coverage.pdf.

47. Virginia

a. Employers Affected

Public and private employers that are not subject to federal COBRA rules and maintain group hospital, medical, surgical or major medical health coverage, through insurance orself-insurance, in the Commonwealth of Virginia are affected.

b. Eligibility for Coverage

To be eligible for coverage, an employee, spouse or dependent must have been continuously insured under the group policy during the entire three-month period prior to termination of coverage (unless termination was for gross misconduct). Employees, spouses and dependents eligible for Medicare or Medicaid benefits or

for replacement group coverage upon termination are not eligible for continuation coverage.

c. Qualifying Events

Continuation coverage must be provided to employees, spouses and dependents if an eligible employee's or member's coverage terminates (unless termination was for gross misconduct).

d. Election Requirements

The application for continuation coverage and initial payment of premiums must be made to the group policyholder within 31 days after issuance of notice, but in no event beyond the 60 day period following the date of the termination of coverage.

e. Duration of Coverage/Premiums

Continuation coverage will last for 12 months following the date group coverage ends. The premium must not be more than 102% of the group rate applicable on the due date of each payment.

f. Termination of Coverage

Employers may terminate continuation coverage when employees, their spouses, or employees' dependents fail to pay required premiums.

g. Notice Requirements

Employers must provide written notice about the availability to continue coverage to employees, their spouses and employees' dependents within 14 days after they lose group policy coverage. Notice must include procedures and time frames to continue group policy coverage.

For more information regarding Virginia state continuation coverage, contact the Virginia Bureau of Insurance at (804) 371-9741 or on the web at: http://www.scc.virginia.gov/boi/.

48. Washington

The state of Washington currently has no law that requires group health policies to offer continuation coverage, but insurers must offer group policyholders the option to include a provision in their policy providing continuation coverage.

49. West Virginia

a. Employers Affected

Small employers maintaining insurance policies issued for delivery in West Virginia and not subject to COBRA are affected.

b. Eligibility for Coverage

Employees who experience a qualifying event while covered under a covered employer's group health plan. Employees eligible for Medicare or any other group health plan do not qualify for West Virginia continuation coverage.

c. Qualifying Events

The coverage is triggered when a covered employee of a small employer experiences an involuntarily layoff or termination of employment for reasons other than misconduct that would disqualify such employee for unemployment benefits.

d. Election Requirements

Coverage must be elected in writing within 30 days after receiving an election notice from the carrier and must include the initial premium payment for the period beginning on the date coverage would have terminated due to the qualifying event.

e. Duration of Coverage/Premiums

Continued coverage must last for a period not to exceed 18 months, and the same rate must be charged for premiums for the continued coverage as was charged for the group coverage.

f. Termination of Coverage

Continued coverage need not exceed 18 months, or earlier due to (1) failure to make timely payment of premium, (2) becoming covered under any other group health plan, (3) becoming entitled to Medicare Part A or Part B, or (4) termination of coverage under the plan for all employees (unless replaced by similar coverage).

g. Notice Requirements

An employee may give written notice to the carrier within 20 days after a qualifying event of intent to apply for continuation coverage. Within 15 days of receipt of written notice from the employee, the carrier must send each adult qualified beneficiary an election and premium notice.

For more information regarding West Virginia state continuation coverage, contact the West Virginia Offices of Insurance Commissioner at (304) 558-3354 or on the web at: http://www.wvinsurance.gov\.

50. Wisconsin

a. Employers Affected

Wisconsin's continuation law applies to all group health insurance policies that provide hospital or medical coverage to Wisconsin residents. The law applies to group policies issued to employers of any size.

The law applies to policies written outside of Wisconsin if at least 150 of the certificate holders or insureds are residents of Wisconsin.

b. Eligibility for Coverage

Group health policies must allow the following the employee, employee's spouse and dependent children to continue coverage upon termination of their group coverage, provided that they were covered by the policy for the three months preceding the date of termination.

c. Qualifying Events

Employers must permit employees, their spouses and employees' dependents to elect to continue group policy coverage in the event of:

- employees' termination of employment, except for discharges for misconduct;
- employee death; and
- divorce or annulment.

Employees' dependents can elect to continue coverage when they reach group policies' age limits.

d. Election Requirements

Individuals must apply for continuation coverage and pay the applicable premium within 30 days of notification of their rights from the employer.

e. Duration of Coverage/Premiums

Insurers may require individuals who continued their coverage to convert to an individual policy after 18 months.

Individuals must apply for continuation coverage and pay the applicable premium within 30 days of notification of their rights from the employer.

Premiums for continuation coverage are collected by the employer and may not exceed the group premium, including the portion normally contributed by the employer.

f. Termination of Coverage

- The terminated insured establishes residence outside this state.
- The terminated insured fails to make timely payment of a required premium amount.
- The terminated insured is eligible for continued coverage as a divorced spouse and the group member through whom the former spouse originally obtained coverage is no longer eligible for coverage by the group policy or a replacement policy.
- The terminated insured becomes eligible for similar coverage under another group policy.

The insurer may require individuals covered under continuation coverage to convert to individual coverage 18 months after the terminated insured elects the group coverage.

g. Notice Requirements

Employers must notify employees, their spouses and employees' dependents

about their right to elect continuation coverage within five days after employers receive notice to terminate coverage. Written notice must include the time, place and manner in which premium payments must be made.

Notice of continuation rights also must be included in certificates of coverage and in any evidence of coverage provided by a group policy.

Employees must notify employers after qualifying events occur if they want to continue group coverage or convert to individual policies.

See the attached link for COBRA information from the Wisconsin Office of the Commissioner of Insurance - https://oci.wi.gov/Documents/Consumers/PI-023.pdf

51. Wyoming

a. Employers Affected

Employers offering group health insurance policies that are not subject to federal COBRA rules are affected.

b. Eligibility for Coverage

Employees (and their eligible dependents) continuously insured under the group policy during the three-month period immediately prior to the termination of eligibility for group coverage are eligible.

Individuals covered by Medicare or under other group coverage are not eligible.

The dependent children of a covered employee who lose coverage due to attainment of a specified age as set for in the policy are eligible for coverage.

c. Qualifying Events

Coverage is triggered by termination of employment, or, with respect to spouses and dependent children, the employee's coverage by Medicare.

d. Election Requirements

A written election of coverage must be made within 31 days of the termination of group coverage.

e. Duration of Coverage/Premiums

Coverage lasts for 12 months after the date group coverage would have otherwise terminated.

The premium amount must not exceed 102% of the group rate.

f. Termination of Coverage

Coverage will terminate prior to the end of the 12 month period upon the earliest to occur of the following: (1) coverage by Medicare or another group plan; (2) failure to timely pay premiums; or (3) termination of the group policy.

g. Notice Requirements

No provisions.

For more information, contact the Wyoming Department of Insurance, 106 East 6th Avenue, Cheyenne, WY 82002; 307-777-7401 or on the web at: http://doi.wyo.gov/.

M. QUESTIONS & ANSWERS

Q1. ***Are we required to offer COBRA coverage if we do not offer group health insurance (medical, dental, vision, etc.) to our employees?***

No. COBRA only applies to those employers that offer health insurance.

(See COBRA Guide, Section B.2)

Q2. ***Which employees should be considered in determining if the small employer exemption applies?***

When determining if an employer is exempt from offering COBRA the following employees must be counted:

1. All full-time employees of all the related companies within the controlled group of corporations, including related companies located outside the U.S.;
2. All part-time employees (count as a fraction of a full-time employee) of all the related companies within the controlled group of corporations, including related companies located outside the U.S.; and
3. Corporate directors (if they are also employees of the employer).

(See COBRA Guide, Section B.1)

Q3. ***We have just become subject to COBRA. Are we required to advise the employees and spouses covered on our group health plan of their COBRA rights?***

Yes. All employees and spouses receiving group health coverage must be provided with an initial notice explaining their COBRA rights. This includes newly hired employees and their spouses, and spouses added at a later date due to marriage.

(See COBRA Guide, Section H.1)

Q4. ***Should we notify dependents of their COBRA rights?***

Yes. Notify the spouse – the dependents of the spouse will fall under this notification.

(See COBRA Guide, Section H.1)

Q5. ***We are moving our medical plan to a different insurance company at renewal. Will the individuals that are on COBRA with our current insurance company remain on that plan?***

No. The current policy will no longer be in effect when you move to a different insurance company. Therefore, all individuals (active employees, their dependents, and everyone on COBRA) that continue to be eligible for coverage will transfer to the new plan.

(See COBRA Guide, Section G.5)

Q6. ***Who can become a qualified beneficiary?***

Employees, former employees, and their spouses and dependent children that arecovered by the employer's health plan on the day before the qualifying event. The former employee's newborn child or a child placed for adoption can become qualified beneficiaries with the right to elect COBRA coverage, make plan changes, and make additions and deletions. This includes active employees, former employees, and their spouses and dependents. Spouses and other dependents that are added to a qualified beneficiary's COBRA coverage after the initial qualifying event are only considered plan participants.

(See COBRA Guide, Section C)

Q7. ***Are we required to send COBRA notices to qualified beneficiaries by registered or certified mail?***

There are no regulations that require the use of registered or certified mail when sending COBRA notices, but the employer must be able to prove that notices were sent to qualified beneficiaries. We recommend using a certificate of mailing, which is less costly than certified mail. This still provides the employer with proof of mailing, but the qualified beneficiary does not have to sign a receipt to receive the notice.

(See COBRA Guide, Section H.1.c and Section H.3.c)

Q8. ***Does each qualified beneficiary have an independent right to elect COBRA coverage?***

Yes. It is also important to note that qualified beneficiaries that are either covered employees or spouses of covered employees are able to elect COBRA coverage on behalf of all other qualified beneficiaries, and the election will be binding. Also, elections may be made on behalf of minor children by their parents or legal guardians, and by legal representatives in cases where the qualified beneficiary dies or becomes incapacitated.

(See COBRA Guide, Section G.2)

Q9. ***Are we able to accept a verbal election or cancellation of COBRA coverage from a qualified beneficiary?***

Verbal elections and cancellations are not recommended unless they are followed by written confirmation. Without documentation a qualified beneficiary could dispute his or her rights.

(See COBRA Guide, Section H.6)

Q10. ***We received a qualified beneficiary's election of COBRA after the 60-day period to elect had expired. Are we able to decline COBRA coverage?***

Elections are made on the date they are sent to the plan administrator. Therefore, if the

election was sent on or before the 60th day, it should be accepted even though it may have been received after the election period had expired. We recommend that employers keep a qualified beneficiary's election file open for several days beyond the 60-day election period and also review, for mitigating circumstances, those elections that are clearly late. There may be cases where it is not prudent for the employer to deny an election.

(See COBRA Guide, Section H.6)

Q11. ***After receiving notice from a qualified beneficiary that she is waiving her right to elect COBRA coverage, we received notice that she would like to revoke the waiver. Her 60-day period to elect COBRA has not expired. When should her COBRA coverage be effective?***

Employers are only required to provide COBRA coverage from the date of the revocation. Of course, this will cause a gap in coverage from the date of the loss of coverage to the date that the waiver is revoked. Employers can decide if COBRA coverage will be effective from the loss of coverage (with no gap in coverage), or on the date of the revocation. Before an employer makes this decision they should confirm how their particular insurance carriers interpret this type of situation.

(See COBRA Guide, Section H.6.d)

Q12. ***Does COBRA coverage have to be offered if an employee moves from full-time to part-time employment?***

If the move to part-time employment causes a loss of coverage, then COBRA coverage must be offered. For example, the plan states that only employees that work over 30 hours a week are eligible for coverage. A full-time employee becomes part-time and only works 20 hours a week. Due to a reduction in hours the employee cannot stay on the plan, and a qualifying event has occurred. Therefore, because of the loss of coverage, the employee has the right to elect COBRA.

(See COBRA Guide, Section D.2.b)

Q13. ***Does COBRA coverage have to be offered to an employee that was terminated due to gross misconduct?***

No. Employers are able to decline COBRA coverage because of termination due to gross misconduct, even though a loss of coverage has occurred. The IRS Regulations and the statute do not provide any guidelines for employers to use in determining if the employee's actions can be defined as gross misconduct. Therefore, it is the responsibility of employers to determine if the employee's actions should be defined as gross misconduct.

Employers should note that the gross misconduct exception was intended to be quite limited in its application, because an employee's actions could lead to innocent spouses' and children's' inability to continue on COBRA coverage. Because of this, employers

should review each case carefully and consult legal counsel and the insurance company before denying an employee's right to COBRA coverage. Not having a clear definition of gross misconduct means that employers risk being sued for coverage, and being subject to penalties for not offering COBRA coverage.

It is important to note that employers are required to provide a Notice of Unavailability of COBRA Coverage to those individuals who will not be offered COBRA because of a termination due to gross misconduct.

(See COBRA Guide, Section D.2.a)

Q14. ***Are there any COBRA regulations that prohibit an employer from canceling an employee's health coverage the day before he or she will be fired?***

Yes. Employers are specifically prohibited from canceling an employee's coverage in anticipation of a qualifying event so that COBRA coverage does not have to be offered.

(See COBRA Guide, Section D.2.a)

Q15. ***Can COBRA coverage be terminated if a qualified beneficiary becomes covered under another employer's plan?***

COBRA coverage can be terminated when a qualified beneficiary first becomes covered under another employer’s group health plan after the date they elected COBRA. However, qualified beneficiaries with pre-existing conditions that are excluded or limited by a new employer’s plan are able to continue on COBRA coverage. Therefore, employers should not be too hasty in terminating COBRA coverage until all the facts are known. A qualified beneficiary may have both the other group health coverage and COBRA if he or she had both prior to electing COBRA.

(See COBRA Guide, Section F.2.b)

Q16. ***An employee and his spouse have elected COBRA coverage due to his termination of employment. During the 18-month coverage period the employee and spouse get divorced. Are we able to cancel the spouse's coverage?***

No. The spouse is a qualified beneficiary and has the right to continue her coverage for 36 months from the first qualifying event (termination of employment) because the divorce is considered the second qualifying event. If the spouse did not elect COBRA coverage at the time of the termination of employment, but was added to the employee's COBRA coverage at a later date, he or she will not be considered a qualified beneficiary and would not be able to continue on COBRA after the divorce. Similarly, if a qualified beneficiary adds a new spouse to his or her COBRA coverage, and then there is a subsequent divorce, the spouse is not considered a qualified beneficiary and would not be able to continue on COBRA after the divorce.

(See COBRA Guide, Section D.2.d)

Q17. ***An employee, her spouse, and children have elected COBRA coverage for 18 months due to her termination of employment. When the 18 months of coverage expires can the spouse and children elect to continue coverage for an additional 18 months?***

No. The maximum period of coverage available due to termination of employment is 18 months. This can only be extended to 36 months when a second qualifying event occurs during the 18-month period. Examples of second qualifying events are divorce, death, and cessation of dependency.

(See COBRA Guide, Section E.1)

Q18. ***Can an employee who elects COBRA coverage due to termination of employment ever extend the 18-month period?***

Yes. The 18-month period can be extended to 29 months if the qualified beneficiary receives a disability determination from the Social Security Administration. The determination must be provided to the employer within 60 days from the date of determination, and also within the original 18-month period. In addition, the qualified beneficiary must have been disabled at the time of the qualifying event, or within 60 days after the date of the qualifying event.

(See COBRA Guide, Section E.3)

Q19. ***An employee's daughter was added to COBRA coverage because she was no longer eligible to be covered as a dependent on the employee's plan. What is the maximum period of time she can stay on COBRA, and is she able to add her new husband to her COBRA coverage?***

The daughter's maximum period of coverage is 36 months. Her new husband can be added from the date of marriage as a plan participant, but he will never be considered a qualified beneficiary and have the same rights. For example, if the daughter's coverage terminates, the husband will not be able to remain on the plan. Since he is not a qualified beneficiary, he does not have the right to continue COBRA coverage.

(See COBRA Guide, Section E.2)

Q20. ***Does the 11-month disability extension have to be offered if a qualified beneficiary becomes disabled while covered under COBRA coverage?***

Maybe. In order to receive the 11-month disability extension, the qualified beneficiary must have been deemed disabled by the Social Security Administration (SSA) at any time within the first 60 days after the qualifying event. Therefore if a qualified beneficiary who was not disabled at the time of their qualifying event becomes disabled at any time during the first 60 days of COBRA, he or she may be entitled to the 11 month disability extension if the SSA determination comes before the end of the original 18 month period of COBRA coverage and the plan is notified of the SSA determination within 60 days.

(See COBRA Guide, Section E.3)

Q21. ***What is the difference between being eligible for Medicare and being entitled to Medicare?***

When an individual reaches age 65 he or she generally becomes eligible for Medicare. At this time he or she qualifies to receive Social Security benefits. Being eligible for Medicare does not mean that the individual has applied for the benefits. To be entitled to Medicare the individual must have actually applied for the benefit, so that if a claim is made it would be considered for payment under Medicare. Certain disabled individuals under age 65 are also entitled to Medicare after having received Social Security disability payments for 24 months. This distinction between being eligible or entitled to Medicare is important in determining if coverage can be terminated, or if a second qualifying event has occurred.

(See COBRA Guide, Section D.2.f)

Q22. ***Does COBRA coverage have to continue when a qualified beneficiary becomes entitled to Medicare?***

Depends. If the qualified beneficiary is entitled to Medicare prior to the election date then he or she cannot be canceled from COBRA coverage. If this individual has a spouse or dependent that is also a qualified beneficiary on the family coverage, but not entitled to Medicare, he or she must also be allowed to continue the benefits. The length of COBRA coverage for the spouse or dependent will be the longer of 18 months from the qualifying event of termination of employment or reduction in hours, or 36 months from the date of Medicare entitlement, if it occurs prior to electing COBRA. If the qualified beneficiary becomes entitled to Medicare after the election date, then COBRA coverage may be terminated. Other family members who are qualified beneficiaries would be able to remain on the plan for the 18 months allowed under COBRA. Employers should contact their insurance companies to find out how Medicare entitlement as a second qualifying event is being handled. Consultation with legal counsel may also be warranted.

(See COBRA Guide, Section D.2.f and Section F.2.c)

Q23. ***Do qualified beneficiaries need to be notified of any changes in the plan?***

Yes. Notify the qualified beneficiaries the same as you would notify your active employees with respect to plan changes and premium increases.

(See COBRA Guide, Section G.5)

Q24. ***Our company offers an HMO plan and an indemnity plan. When one of our employees terminated he elected to continue his HMO coverage. Is he able to switch to the indemnity plan if he moves out of the HMO service area?***

Yes. If the employer provides coverage under a plan that would provide coverage for the qualified beneficiary in the new area, then that coverage should be offered. Also, if active

employees are able to change their coverage at open enrollment, qualified beneficiaries on COBRA coverage must be provided with the same rights.

(See COBRA Guide, Section G.7)

Q25. ***Do we have to wait until open enrollment to add a qualified beneficiary's newborn to the COBRA coverage?***

No. The birth of a child is a HIPAA special enrollment opportunity and qualified beneficiaries have the same rights as active employees to add newborns from the date of birth. The newborn will be considered a qualified beneficiary.

(See COBRA Guide, Section C.1.d)

Q26. ***Are we able to charge additional premium when a qualified beneficiary adds a benefit or dependent at open enrollment?***

Yes. The qualified beneficiary should be charged the additional premium. In some cases the addition of a dependent will not change the premium. For example, many plans will request payment for the first two children only.

(See COBRA Guide, Section I.1.b and Section I.1.f)

Q27. ***Are we able to withhold an employee's final paycheck until he or she elects or declines COBRA coverage?***

No. Employers are not able to withhold money or other benefits to which an employee is entitled until COBRA coverage is elected or declined.

Q28. ***Can a qualified beneficiary's COBRA coverage be terminated if payment was made with an NSF check?***

Yes. Before COBRA coverage is terminated, the plan administrator must allow the qualified beneficiary the opportunity to make the payment prior to the expiration of the grace period (minimum 30 days). If payment is not received, the coverage may be terminated. We recommend that the qualified beneficiary be notified of the termination with documentation kept on file.

Although employers are technically within their rights to terminate a qualified beneficiary's COBRA coverage when the grace period expires, under certain circumstances it may be prudent to allow a little extra time to receive the proper payment.

(See COBRA Guide, Section I.4.a)

Q29. ***Does a qualified beneficiary have the right to reinstate COBRA coverage if he or she is terminated due to non-payment?***

No. Once it is determined that payment was not received within the applicable grace period and there are no mitigating circumstances, the qualified beneficiary can be terminated and

is unable to have coverage reinstated. This applies to all situations where the employer, in compliance with the COBRA regulations, has terminated a qualified beneficiary from COBRA coverage. For example, a qualified beneficiary that has had COBRA coverage for 10 months notifies the plan administrator that she no longer wishes to continue coverage, and is canceled from the plan. Two months later she advises the plan administrator that she wants her coverage reinstated. Because she waived her right to continue coverage, she is unable to come back on the plan.

(See COBRA Guide, Section I.4.d and Section I.4.e)

Q30. ***Do we have to charge qualified beneficiaries the 2% administration fee?***

No. Employers have the option of charging up to 102% of the premium. When a qualified beneficiary receives the 11-month disability extension, the employer may charge up to 150% of the premium.

(See COBRA Guide, Section I.1.a)

Q31. ***Is an employer able to pay the premiums for a qualified beneficiary?***

Yes. In most cases employers require that the qualified beneficiaries pay premium for COBRA coverage, but employers have the option of making a contribution from their funds.

(See COBRA Guide, Section I.5)

Q32. ***What happens when a qualified beneficiary's initial COBRA payment is only for one month's premium, it is made three months after the qualifying event, and it is still within the time limits required?***

The qualified beneficiary's initial payment should cover the period of time from the loss of coverage through the current month. If the current month's grace period has not expired, payment for that month is not required yet. The partial payment must be applied retroactively to the date that COBRA coverage commenced. If additional payment is not received, the grace period expires, and the qualified beneficiary does not make further payments, coverage can be canceled after the month for which payment was received.

(See COBRA Guide, Section I.4.b)

Q33. ***Where can I find answers to additional questions on COBRA Continuation Coverage?***

The U.S. Department of Labor FAQ's can be found on the DOL's website at: http://www.dol.gov/ebsa/faqs/faq_compliance_cobra.html.

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N. COBRA NOTICES TABLE OF CONTENTS

COBRA requires many notice obligations on the part of the employer as well as the participant under the benefits plans.

Disclaimer ..... Page 126

This page helps you understand the circumstances in which you can use these sample documents and your obligations when you choose to do so. You should read this page prior to any use of the documents in this Section of the Guide.

Gallagher Recommended Changes to DOL Model General Notice ..... Page 128

Many experts think that the DOL Model General Notice is missing some items that should be added to fully inform qualified beneficiaries of their rights and obligations. We have included some recommended changes to the DOL Model Election Notice to reflect some of these missing items.

DOL Model General Notice (formerly Initial COBRA Notice) ..... Page 132

When the Department of Labor (DOL) issued its final regulations on the COBRA notice obligations, a Model General Notice was included. This is the Notice formerly known as the Initial COBRA Notice. You can access a Word-formatted version of the Model General Notice in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra. A copy has been provided here for your review.

Notice of COBRA Qualifying Event ..... Page 137

Employees, spouses and sometimes even dependent children are responsible to notify the Employer or Plan Administrator of a qualifying event. The Department of Labor is now requiring that you provide notification procedures to the employee. This Notice encompasses a form that the employee can use as well as the procedures to make a timely notification. The DOL did not provide a model form for this requirement.

Gallagher Recommended Changes to DOL Model Election Notice ..... Page 142

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Conversion Notice ..... Page 155

Plan administrators must notify all qualified beneficiaries that their COBRA coverage is expiring and that they have the right to elect an individual conversion policy if such an option is available under the group health plan.

Notice of Insufficient Payment Page 157

A COBRA premium payment that is short by an insignificant amount will be deemed to satisfy the COBRA payment requirement, unless the plan notifies the qualified beneficiary of the deficiency and allows a reasonable time for the deficient payment to be made.

Notice of Unavailability of Coverage Page 158

This is a new requirement that applies to both COBRA participants and active employees. This notice is provided if it is determined, upon receipt of the Notice of Qualifying Event, that there is no valid qualifying event. This serves to notify the employee that COBRA is not available. The DOL did not provide a model form for this requirement.

Early Termination Notice Page 160

This is a new notice requirement that applies to COBRA participants. This notice is provided to participants whose coverage terminates prior to the end of their continuation period (e.g. non-payment of premium). The DOL did not provide a model form for this requirement.

Disclaimer

PLEASE READ PRIOR TO USING COBRA NOTICES

If you plan to use the Notices provided in this Section please follow the instructions given here.

Please remember that as your insurance consultant, we have prepared these forms to give you an illustrative sample of the notices you need to provide under COBRA. Although we do our best, we do not make any representations or warranties, express or implied, that these sample documents, when used in your specific factual situation, meet applicable legal requirements or agree with your interpretation or your insurer's interpretation of COBRA.

Permission to Use

These are samples. They should not be used "as is". Each form requires that you fill in the blanks, review the language to make sure it meets your needs, and fit the form to your particular circumstances. As a client of ours, you are given the right to use these forms, once modified, to administer COBRA for your employees. Permission is not granted to use these forms to provide COBRA services for other employers for a fee or as part of administrative services for others.

Headers and Footers

We receive many calls from employees who think the notices they received came from us because of the copyright notice on the bottom of the page. Please remove the header and footer on each page of the notices as part of your overall review prior to using them in practice.

Stay up to Date

These forms are updated on a regular basis for changes in laws, regulations and court interpretations. It is your responsibility to make sure you have the most current version of the documents.

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Gallagher Recommended Changes to the DOL Model General Notice

The Department of Labor's Model General Notice (formerly known as the Initial Notice) does not include every situation and process that you might use. We have included here selected provisions that you might want to include based on your particular situation and procedures.

LOSS OF COVERAGE IN ANTICIPATION OF DIVORCE OR LEGAL SEPARATION

If a spouse's coverage is lost in anticipation of a divorce, the right to COBRA coverage begins on the date of the divorce/legal separation, not the earlier loss-of-coverage date. This may cause a gap in coverage. The Model General Notice does not require that this information be included; however, an explanation in the Notice may be helpful. An example is provided below:

> If your spouse reduces or eliminates your group health coverage under the Plan in anticipation of a divorce or legal separation, and then later you actually become divorced or legally separated, then the divorce or legal separation may be considered a qualifying event for you even though you previously lost your coverage.

YOU MUST GIVE NOTICE OF SOME QUALIFYING EVENTS

The Model General Notice leaves space for a description of required procedures, forms, and required documentation needed for the participant to provide notice to the employer of a qualifying event in certain circumstances. Also, the Model General Notice does not explain the consequences for failure to provide a timely notice. You should complete that section with your own procedures and forms and the consequences of failing to provide a timely notice. An example is included here:

> For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days after the later of either the date of the qualifying event or the date on which you lose coverage. You must provide this notice using the attached form entitled "Notice of Qualifying Event", and you must follow the Notice Procedures described on the form. If you do not follow the procedures or if you do not provide the notice during the 60-day notice period, you will lose your right to elect or, in the case of a second qualifying event, extend COBRA.

HOW IS COBRA CONTINUATION COVERAGE PROVIDED

The new DOL Model General Notice does not specifically indicate that certain first qualifying events such as divorce or a child aging out of a plan have a maximum duration of 36 months rather than 18 months. Plans may want to add the following language (taken from the previous DOL model) to provide this information:

COBRA continuation coverage is a temporary continuation of coverage. When the qualifying event is the death of the employee, the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), your divorce or legal separation, or a dependent child's losing eligibility as a dependent child, COBRA continuation coverage lasts 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. For example, if a covered employee becomes entitled to Medicare 8 months before the date on which his employment terminates, COBRA continuation coverage for his spouse and children can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus 8 months). Otherwise, when the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA continuation coverage generally lasts for only up to a total of 18 months. There are two ways in which this 18-month period of COBRA continuation coverage can be extended.

DISABILITY EXTENSION OF 18-MONTH PERIOD OF CONTINUATION COVERAGE

The Model General Notice leaves space for a description of required procedures, forms and required documentation needed for the participant to provide notice to the employer of a disability. An example is included below. Where instructions are specific to employer's practices and documents, you need to customize them to fit your practices and forms.

The disability extension is only available if you notify the plan administrator in writing of the Social Security Administration's determination of disability within 60 days after the latest of: (1) the date of the Social Security Administration's disability determination; (2) the date of your termination of employment or reduction in hours; or (3) the date on which you lose coverage due to the termination or reduction in hours. You must also provide this notice within 18 months after the covered employee terminates employment or reduces hours in order to be entitled to the extension.

You must provide this notice using the attached form entitled "Notice of Qualifying Event", and you must follow the Notice Procedures described on the form. If you do not follow the procedures or if you do not provide the notice during the 60-day notice period, you will lose your right to extend COBRA.

HEALTH CARE FLEXIBLE SPENDING (EXPENSE) ACCOUNT COMPONENT

If a health FSA meets certain conditions, the obligation to offer COBRA coverage is limited. Only health FSAs that meet the maximum benefit and availability conditions and the COBRA premium condition qualify for the special limited COBRA obligation. If the health FSA does not qualify for

the limited COBRA obligation, COBRA coverage must be offered for the maximum COBRA period, including open enrollment rights. For plan years that begin on or after January 1, 2014, health care FSAs that do not meet the maximum benefit and availability conditions will be in violation of PPACA and subject to potential penalty of $100 per day per affected person. There is a delay available for non-federal governmental plans where legislative action is necessary to modify the terms of the health FSA. As a result, the vast majority of health FSAs that do not include a carryover provision will offer COBRA coverage only until the end of the plan year. If you are uncertain whether your FSA will allow for limited COBRA obligation, please contact your Gallagher Benefit Services Consultant.

If your health FSA qualifies for the special limited COBRA obligations, we recommend you include an explanation in your Model General Notice. An example is provided below:

> COBRA coverage under the Health Care Expense Account will be offered only to qualified beneficiaries losing coverage who have under spent their accounts. A qualified beneficiary has an under spent account if the annual limit elected by the covered employee, reduced by reimbursements up to the time of the qualifying event, is equal to or more than the amount of the premiums for the Health Care Expense Account COBRA coverage that will be charged for the remainder of the plan year. The use-it-or-lose-it rule will continue to apply, so any unused amounts will be forfeited at the end of the plan year, and COBRA coverage will terminate at the end of the plan year. Unless otherwise elected, all qualified beneficiaries who were covered under the Health Care Expense Account will be covered together for COBRA coverage for the Health Care Expense Account.

For health FSAs that include a carryover provision, use the following language and modify the dollar amount if the carryover amount under the plan is less than $610 (for 2023):

> COBRA coverage under the Health Care Expense Account will be offered only to qualified beneficiaries losing coverage who have under spent their accounts. A qualified beneficiary has an under spent account if the annual limit elected by the covered employee, reduced by reimbursements up to the time of the qualifying event, is equal to or more than the amount of the premiums for the Health Care Expense Account COBRA coverage that will be charged for the remainder of the plan year. Amounts up to $610 that are unused at the end of the current plan year may be carried forward and will be available to reimburse expenses at any time during the following plan year. The use-it-or-lose-it rule will continue to apply to unused amounts in excess of $610, so any unused amounts over $610 will be forfeited at the end of the plan year. COBRA coverage will terminate at the end of the current plan year; however any amount carried forward will be available for the following plan year. Unless otherwise elected, all qualified beneficiaries who were covered under the Health Care Expense Account will be covered together for COBRA coverage for the Health Care Expense Account.

OTHER QUALIFIED BENEFICIARIES

There are situations when other individuals may be entitled to additional COBRA rights. These situations are not required to be included in the Model General Notice. However, they may be helpful to the participants:

Children born to or placed for adoption with the covered employee during COBRA covered period

A child born to, adopted by, or placed for adoption with a covered employee during a period of COBRA coverage is considered a qualified beneficiary provided that, the covered employee is a qualified beneficiary and the covered employee has elected COBRA coverage for himself or herself. The child's COBRA coverage begins when the child is enrolled in the Plan, whether through special enrollment or open enrollment, and it lasts for as long as COBRA coverage lasts for other family members of the employee. To be enrolled in the Plan, the child must satisfy the otherwise applicable Plan eligibility requirements.

Alternate recipients under QMCSOs

A child of the covered employee who is receiving benefits under the Plan pursuant to a Qualified Medical Child Support Order (QMCSO) received by the plan administrator during the covered employee's period of employment is entitled to the same rights to elect COBRA as an eligible dependent child of the covered employee.

SECOND QUALIFYING EVENTS

The Model General Notice describes the circumstances under which a qualified beneficiary may be able to extend COBRA coverage due to a second qualifying event that occurs during the 18-month COBRA period. You may want to add that the second qualifying event rule also applies during the period a qualified beneficiary is covered under the disability extension. An example is included here:

> In addition, if your family experiences another qualifying event during the disability extension, the spouse and dependent children in your family can get up to a maximum of 36 months if the Plan is properly notified about the second qualifying event. This extension may be available to the spouse and any dependent children getting COBRA continuation coverage if the employee or former employee dies; becomes entitled to Medicare benefits (under Part A, Part B, or both); gets divorced or legally separated; or if the dependent child stops being eligible under the Plan as a dependent child. This extension is only available if the second qualifying event would have caused the spouse or dependent child to lose coverage under the Plan had the first qualifying event not occurred.

(End of Gallagher Recommended Changes)

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DOL Model General (Initial) Notice of COBRA Continuation Coverage Rights

(For use by single-employer group health plans)
****CONTINUATION COVERAGE RIGHTS UNDER COBRA****

You can access a Word-formatted version of the Model General Notice in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra. **A copy has been provided here for your review.**

INTRODUCTION

You're getting this notice because you recently gained coverage under a group health plan (the Plan). This notice has important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. This notice explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect your right to get it. When you become eligible for COBRA, you may also become eligible for other coverage options that may cost less than COBRA continuation coverage.

The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage can become available to you and other members of your family when group health coverage would otherwise end. For more information about your rights and obligations under the Plan and under federal law, you should review the Plan's Summary Plan Description or contact the Plan Administrator.

You may have other options available to you when you lose group health coverage. For example, you may be eligible to buy an individual plan through the Health Insurance Marketplace. By enrolling in coverage through the Marketplace, you may qualify for lower costs on your monthly premiums and lower out-of-pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

WHAT IS COBRA CONTINUATION COVERAGE?

COBRA continuation coverage is a continuation of Plan coverage when it would otherwise end because of a life event. This is also called a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage [choose and enter appropriate information: must pay or aren't required to pay] for COBRA continuation coverage.

If you're an employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of the following qualifying events:

- Your hours of employment are reduced, or
- Your employment ends for any reason other than your gross misconduct.

If you're the spouse of an employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of the following qualifying events:

- Your spouse dies;
- Your spouse's hours of employment are reduced;
- Your spouse's employment ends for any reason other than his or her gross misconduct;
- Your spouse becomes entitled to Medicare benefits (under Part A, Part B, or both); or
- You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they lose coverage under the Plan because of the following qualifying events:

- The parent-employee dies;
- The parent-employee's hours of employment are reduced;
- The parent-employee's employment ends for any reason other than his or her gross misconduct;
- The parent-employee becomes entitled to Medicare benefits (Part A, Part B, or both);
- The parents become divorced or legally separated; or
- The child stops being eligible for coverage under the Plan as a "dependent child."

[If the Plan provides retiree health coverage, add the following paragraph:]

Sometimes, filing a proceeding in bankruptcy under title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with respect to [enter name of employer sponsoring the Plan], and that bankruptcy results in the loss of coverage of any retired employee covered under the Plan, the retired employee will become a qualified beneficiary. The retired employee's spouse, surviving spouse, and dependent children will also become qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

WHEN IS COBRA COVERAGE AVAILABLE?

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. The employer must notify the Plan Administrator of the following qualifying events:

- The end of employment or reduction of hours of employment;
- Death of the employee;

- [*add if Plan provides retiree health coverage:* Commencement of a proceeding in bankruptcy with respect to the employer;]; or
- The employee's becoming entitled to Medicare benefits (under Part A, Part B, or both).

For all other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days [or enter longer period permitted under the terms of the Plan] after the qualifying event occurs. You must provide this notice to: [Enter name of appropriate party]. [Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.]

HOW IS COBRA COVERAGE PROVIDED?

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. 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.

COBRA continuation coverage is a temporary continuation of coverage that generally lasts for 18 months due to employment termination or reduction of hours of work. Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.

There are also ways in which this 18-month period of COBRA continuation coverage can be extended:

Disability extension of 18-month period of COBRA continuation coverage

If you or anyone in your family covered under the Plan is determined by Social Security to be disabled and you notify the Plan Administrator in a timely fashion, you and your entire family may be entitled to get up to an additional 11 months of COBRA continuation coverage, for a maximum of 29 months. The disability would have to have started at some time before the 60th day of COBRA continuation coverage and must last at least until the end of the 18-month period of COBRA continuation coverage. *[Add description of any additional Plan procedures for this notice, including a description of any required information or documentation, the name of the appropriate party to whom notice must be sent, and the time period for giving notice.]*

Second qualifying event extension of 18-month period of continuation coverage

If your family experiences another qualifying event during the 18 months of COBRA continuation coverage, the spouse and dependent children in your family can get up to 18 additional months of COBRA continuation coverage, for a maximum of 36 months, if the Plan is properly notified about the second qualifying event. This extension may be available to the spouse and any dependent children getting COBRA continuation coverage if the employee or former employee dies; becomes entitled to Medicare benefits (under Part A, Part B, or both); gets divorced or legally separated; or if the dependent child stops being eligible under the Plan as a dependent child. This extension is only available if the second qualifying event would have caused the spouse or

dependent child to lose coverage under the Plan had the first qualifying event not occurred.

ARE THERE OTHER COVERAGE OPTIONS BESIDES COBRA CONTINUATION COVERAGE?

Yes. Instead of enrolling in COBRA continuation coverage, there may be other coverage options for you and your family through the Health Insurance Marketplace, Medicare, Medicaid, Children's Health Insurance Program (CHIP), or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage. You can learn more about many of these options at www.healthcare.gov

CAN I ENROLL IN MEDICARE INSTEAD OF COBRA CONTINUATION COVERAGE AFTER MY GROUP HEALTH PLAN COVERAGE ENDS?

In general, if you don't enroll in Medicare Part A or B when you are first eligible because you are still employed, after the Medicare initial enrollment period, you have an 8-month special enrollment period to sign up for Medicare Part A or B, beginning on the earlier of

- The month after your employment ends; or
- The month after group health plan coverage based on current employment ends.

If you don't enroll in Medicare and elect COBRA continuation coverage instead, you may have to pay a Part B late enrollment penalty and you may have a gap in coverage if you decide you want Part B later. If you elect COBRA continuation coverage and later enroll in Medicare Part A or B before the COBRA continuation coverage ends, the Plan may terminate your continuation coverage. However, if Medicare Part A or B is effective on or before the date of the COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even if you enroll in the other part of Medicare after the date of the election of COBRA coverage.

If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA continuation coverage will pay second. Certain plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.

For more information visit https://www.medicare.gov/medicare-and-you.

IF YOU HAVE QUESTIONS

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to the contact or contacts identified below. For more information about your rights under the Employee Retirement Income Security Act (ERISA), including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, 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 www.dol.gov/ebsa. (Addresses and phone numbers

of Regional and District EBSA Offices are available through EBSA's website.) For more information about the Marketplace, visit www.HealthCare.gov.

KEEP YOUR PLAN INFORMED OF ADDRESS CHANGES

To protect your family's rights, let the Plan Administrator know about any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

PLAN CONTACT INFORMATION

[Enter name of the Plan and name (or position), address and phone number of party or parties from whom information about the Plan and COBRA continuation coverage can be obtained on request.]

(End of Notice)

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Notice of COBRA Qualifying Event

Identify the Employee:	Covered Employee's Address:

Qualifying Events for COBRA:

☐ **Divorce (Attach a copy of the final divorce decree)** **Date of Divorce:**_____

☐ **Legal Separation (Attach a copy of the legal separation)**

Date of Legal Separation:_____

Name of Spouse:_____

Address of Spouse:_____

_____

☐ **Employee's Child Ceases to be a Dependent Under the Plan**

Date Child Ceased to be a Dependent:_____

Name of Child:_____

Address of Child:_____

_____

Reason for loss of Dependent Status:

☐ **Attained age**_____ ☐ **Lost student status** ☐ **Married** ☐ **Other (explain):**_____

☐ **Disability (Attach copy of SSA Determination)**

Date of Initial Qualifying Event:_____

☐ **Termination of Employment**

☐ **Reduction of Hours**

Name of Disabled Qualified Beneficiary:_____

Address (if different from employee):_____

Date of Social Security Administration's Determination:_____

Date that disabled Qualified Beneficiary became disabled (per SSA):_____

Has SSA subsequently determined that the Qualified Beneficiary is no longer Disabled? _____

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☐ **Death of Covered Employee**

Date of death: _____

Address (if different than covered employee): _____

_____

Certification:

I certify that the information given on this form is true and correct.

☐ I am the employee or former employee

☐ I am the spouse or former spouse

☐ I am the dependent child

☐ Other, explain: _____

_____ _____ _____

Signature Date Print Name

_____ _____ _____

Address (If different than covered employee) Phone Number

INSTRUCTIONS TO COMPLETE THIS FORM:

This Form (including the Notice Procedures) is part of the Plan's COBRA General Notice and also part of the Plan's COBRA Election Notice. For more information about this Form, you should review the Plan's Summary Plan Description and the General Notice and/or Election Notice. You may obtain copies of these documents from the Plan Administrator. You must follow the Notice Procedures for Notice of Qualifying Event. If your notice is late or incomplete, you will not be offered the opportunity to elect COBRA.

WHEN TO USE THIS FORM:

You should use this Form when you have a qualifying event as follows:

- A spouse covered under the Plan becomes divorced or legally separated from the covered employee.
- The covered employee reduces or eliminates the spouse's coverage under the Plan in anticipation of a divorce or legal separation, and the divorce or legal separation has now occurred.
- A child covered under the Plan ceases to be a dependent under the terms of the Plan.
- A qualified beneficiary has received a Social Security Administration Determination of Disability that the individual was disabled on any day of the first 60 days following a qualifying event of termination of employment or reduction in hours by the employee.
- The COBRA covered former employee dies.

DEADLINE:

Divorce, legal separation, or loss of dependent status: The deadline for providing this Notice of Qualifying Event is 60 days after the later of (1) the qualifying event; and (2) the date on which the covered spouse or dependent child would lose coverage under the terms of the Plan as a result of the qualifying event.

Social Security Disability: The deadline for providing this Notice of Qualifying Event is 60 days after the latest of (1) the date of the Social Security Administration's determination, (2) the date of the covered employee's termination of employment or reduction in hours, and (3) the date on which the qualified beneficiary would lose coverage under the terms of the plan as a result of the termination of employment or reduction in hours. Your notice of qualifying event must also be provided within 18 months after the covered employee's termination of employment or reduction in hours

If your notice is late, or if it is not completed and provided to the Plan Administrator as described here, you will not be offered the opportunity to elect COBRA.

DELIVERY OF NOTICE:

You must mail or hand deliver this notice to:

[*Fill in your contact information*]

This contact information may change from time to time. The most recent contact information will be included in the Plan's most recent Summary Plan Description. You may request a copy from the Plan Administrator.

Your Notice must be on this Form and must be mailed or hand-delivered. Oral notice, including notice by telephone or email is not acceptable. If mailed, your notice must be postmarked no later than the deadline provided on the Form. If hand-delivered, your notice must be received by the individual at the address given above no later than the deadline described above.

COMPLETION OF THE FORM

You must use this Form of Notice of Qualifying Event to notify the Plan Administrator of a qualifying event and all of the applicable items must be completed, including any copies of divorce or separation decrees or Social Security Determinations.

If your coverage is reduced or eliminated and later a divorce or legal separation occurs, you might have the right to COBRA if your coverage was eliminated in anticipation of such an event. You must provide notice within 60 days of the divorce or legal separation and must provide satisfactory evidence to the Plan Administrator that the elimination of coverage was in anticipation of the divorce or legal separation.

If you either provide an incomplete Form or do not provide the required additional documentation, such a notice will still be considered timely if all of the following conditions are met:

- The Notice is mailed or hand-delivered to the individual listed above by the deadline
- From the Notice, the Plan Administrator is able to determine that the Notice relates to the Plan and is able to identify the covered employee and qualified beneficiaries, the qualifying event and the date on which it occurred; and
- The Notice is completed with all required elements in writing within 15 days after the written or oral request is made from the Plan Administrator for the additional information.

If any of these conditions is not met, then the incomplete notice will be rejected and COBRA will not be offered. If all of the conditions are met, the Plan will treat the Notice as having been provided on the date the Plan receives all the information and documentation, but will accept the Notice as timely.

ADDITIONAL REQUESTS FOR EVIDENCE OF A QUALIFYING EVENT

The Plan Administrator reserves the right to request additional documentation of a qualifying event. For example, if the qualifying event is a dependent child ceasing to be a dependent under the Plan, the Plan Administrator may request a copy of the birth certificate or educational transcript. If you do not provide this additional evidence within 15 days after a written or oral request for it, then the COBRA coverage may be terminated or the request may be denied. If the individual has already been placed on active COBRA coverage, then the COBRA coverage may

be terminated retroactively and the Plan Administrator will require repayment to the Plan of all benefits paid.

(End of Notice)

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Gallagher Recommended Changes and Additions to the DOL Model Election Notice

THE DEPARTMENT OF LABOR'S MODEL ELECTION NOTICE DOES NOT INCLUDE EVERY SITUATION AND PROCESS THAT YOU MIGHT USE. WE HAVE INCLUDED HERE SELECTED PROVISIONS THAT YOU MIGHT WANT TO INCLUDE BASED ON YOUR PARTICULAR SITUATION AND PROCEDURES.

LOSS OF COVERAGE IN ANTICIPATION OF DIVORCE OR LEGAL SEPARATION

If a spouse's coverage is lost in anticipation of a divorce, the right to COBRA coverage begins on the date of the divorce/legal separation, not the earlier loss-of-coverage date. This may cause a gap in coverage. The Model Election Notice does not require that this information be included; however, an explanation in the Notice may be helpful. An example is provided below:

> If your spouse reduces or eliminates your group health coverage under the Plan in anticipation of a divorce or legal separation, and then later you actually become divorced or legally separated, then the divorce or legal separation may be considered a qualifying event for you even though you previously lost your coverage.

YOU MUST GIVE NOTICE OF SECOND QUALIFYING EVENTS

The Model Election Notice leaves space for a description of required procedures, forms, and required documentation needed for the participant to provide notice to the employer of a second qualifying event. You should complete that section with your own procedures and forms. An example is included here:

> For second qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days after the date of the second qualifying event. You must provide this notice using the attached form entitled "Notice of Qualifying Event", and you must follow the Notice Procedures described on the form. If you do not follow the procedures or if you do not provide the notice during the 60-day notice period, you will lose your right to extend your COBRA.

DISABILITY EXTENSION OF 18-MONTH PERIOD OF CONTINUATION COVERAGE

The Model Election Notice leaves space for a description of required procedures, forms and required documentation needed for the participant to provide notice to the plan administrator of a disability. An example is included below. Where instructions are specific to your practices and documents, you need to customize them to fit your practices and forms.

> The disability extension is only available if you notify the plan administrator in writing of the Social Security Administration's determination of disability within 60 days after the latest of: (1) the date of the Social Security Administration's disability determination; (2)

the date of your termination of employment or reduction in hours; or (3) the date on which you lose coverage due to the termination or reduction in hours. You must also provide this notice within 18 months after the covered employee terminates employment or reduces hours in order to be entitled to the extension.

You must provide this notice using the attached form entitled "Notice of Qualifying Event", and you must follow the Notice Procedures described on the form. If you do not follow the procedures or if you do not provide the notice during the 60-day notice period, you will lose your right to extend COBRA.

HEALTH CARE FLEXIBLE SPENDING (EXPENSE) ACCOUNT COMPONENT

If a health FSA meets certain conditions, the obligation to offer COBRA coverage is limited. Only health FSAs that meet the maximum benefit and availability conditions and the COBRA premium condition qualify for the special limited COBRA obligation. If the health FSA does not qualify for the limited COBRA obligation, COBRA coverage must be offered for the maximum COBRA period, including open enrollment rights. If you are uncertain whether your FSA will allow for limited COBRA obligation, please contact your Gallagher Benefit Services Consultant.

If your health FSA qualifies for the special limited COBRA obligations, we recommend you include an explanation in your Model Election Notice: An example is provided below:

> COBRA coverage under the Health Care Expense Account will be offered only to qualified beneficiaries losing coverage who have under spent their accounts. A qualified beneficiary has an under spent account if the annual limit elected by the covered employee, reduced by reimbursements up to the time of the qualifying event, is equal to or more than the amount of the premiums for the Health Care Expense Account COBRA coverage that will be charged for the remainder of the plan year. The use-it-or-lose-it rule will continue to apply, so any unused amounts will be forfeited at the end of the plan year, and COBRA coverage will terminate at the end of the plan year. Unless otherwise elected, all qualified beneficiaries who were covered under the Health Care Expense Account will be covered together for COBRA coverage for the Health Care Expense Account.

OTHER QUALIFIED BENEFICIARIES

There are situations when other individuals may be entitled to additional COBRA rights. These situations are not required to be included in the Model Election Notice. However, they may be helpful to the participants:

Children born to or placed for adoption with the covered employee during COBRA covered period

A child born to, adopted by, or placed for adoption with a covered employee during a period of COBRA coverage is considered a qualified beneficiary provided that, the covered employee is a qualified beneficiary and the covered employee has elected COBRA coverage for himself or

herself. The child's COBRA coverage begins when the child is enrolled in the Plan, whether through special enrollment or open enrollment, and it lasts for as long as COBRA coverage lasts for other family members of the employee. To be enrolled in the Plan, the child must satisfy the otherwise applicable Plan eligibility requirements.

Alternate recipients under QMCSOs

A child of the covered employee who is receiving benefits under the Plan pursuant to a qualified medical child support order (QMCSO) received by the plan administrator during the covered employee's period of employment is entitled to the same rights to elect COBRA as an eligible dependent child of the covered employee.

COBRA PAYMENT

You may want to add language to the explanation of how to make timely payment for COBRA continuation coverage that describes your own practices and procedures. Examples are provided below:

> Your first payment must cover the cost of COBRA coverage from the time your coverage under the Plan would have otherwise terminated up through the end of the month before the month in which you make your first payment.
>
> If mailed, your payment is considered to have been made on the date that it is postmarked. If hand-delivered, your payment is considered to be made when it is received by the individual at the address specified above. You will not be considered to have made any payment by mailing or hand delivering a check if your check is returned due to insufficient funds or otherwise.

PROVIDING NOTICE OF EVENTS THAT WOULD PERMIT EARLY TERMINATION OF COBRA

The Model Election Notice does not include a statement requiring a qualified beneficiary to provide notice of any event that would allow the early termination of COBRA coverage (e.g. obtaining coverage under another employer plan, enrolling in Medicare), and the procedures for notifying the plan of those events. You may want to add language requiring COBRA qualified beneficiaries to provide timely notification of these events and the consequences of failing to do so. An example is provided below:

> If you or any family member obtains coverage under another employer's plan or enrolls in Medicare, you must notify the Plan Administrator within 30 days after the date on which you enroll in the other coverage. You must provide this notice to *[enter the name of the party responsible for COBRA administration for the plan with telephone number and address]*. If you do not provide the notification during the 30-day notice period, the Plan Administrator reserves the right to cancel your COBRA coverage retroactively and request refunds of any benefits paid for services incurred on or after the date you obtained other coverage.

HEALTH CARE TAX CREDIT (HCTC)

The HCTC, as part of the Trade Act of 2002, expired on December 31, 2013. It was available to certain individuals who become eligible for trade adjustment assistance due to foreign competition and for certain retired employees who were receiving pension payments from the PBGC. On July 6, 2015, the Trade Preferences Extension Act of 2015 was enacted. It retroactively reinstated the HCTC program and extended it through December 31, 2019. Before the extension, the DOL model COBRA Election Notice included a brief description of the HCTC program. That language was dropped from subsequent model notices once the HCTC program expired in 2013. As a result of the extension, if you have employees that might be eligible for trade adjustment assistance, an example of suggested HCT language is below:

> 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 could either take a tax credit or get advance payment of 65% of premiums paid for qualified health insurance, including continuation coverage. The Trade Adjustment Assistance Extension Act of 2011 increased the tax credit from 65% to 72.5% for eligible coverage months beginning after February 12, 2011. The Trade Preferences Extension Act of 2015 maintains the 72.5% subsidy.

(End of Gallagher Recommended Changes)

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DOL Model COBRA Continuation Coverage Election Notice

(For use by single-employer group health plans)

You can access a Word-formatted version of the Model COBRA Continuation Coverage Election Notice in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra. A copy has been provided here for your review.

IMPORTANT INFORMATION: COBRA Continuation Coverage and other Health Coverage Alternatives

[*Enter date of notice*]

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

This notice has important information about your right to continue your health care coverage in the [enter name of group health plan] (the Plan), as well as other health coverage options that may be available to you, including coverage through the Health Insurance Marketplace at http://www.HealthCare.gov or call 1-800-318-2596. **You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage.** Please read the information in this notice very carefully beforeyou make your decision. If you choose to elect COBRA continuation coverage, you should use the election form provided later in this notice.

WHY AM I GETTING THIS NOTICE?

You're getting this notice because your coverage under the Plan will end on [enter date] due to [check appropriate box]:

☐ End of employment

☐ Reduction in hours of employment

☐ Death of employee

☐ Divorce or legal separation

☐ Entitlement to Medicare

☐ Loss of dependent child status

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage through COBRA continuation coverage when there's a "qualifying event" that would result in a loss of coverage under an employer's plan.

WHAT'S COBRA CONTINUATION COVERAGE?

COBRA continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries who aren't getting continuation coverage. Each "qualified beneficiary" (described below) who elects COBRA continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan.

WHO ARE THE QUALIFIED BENEFICIARIES?

Each person ("qualified beneficiary") in the category(ies) checked below can elect COBRA continuation coverage:

☐ 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

ARE THERE OTHER COVERAGE OPTIONS BESIDES COBRA CONTINUATION COVERAGE?

Yes. Instead of enrolling in COBRA continuation coverage, there may be other more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, Medicare, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage.

You should compare your other coverage options with COBRA continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage you may pay more out of pocket than you would under COBRA because the new coverage may impose a new deductible.

When you lose job-based health coverage, it's important that you choose carefully between COBRA continuation coverage and other coverage options, because once you've made your choice, it can be difficult or impossible to switch to another coverage option.

IF I ELECT COBRA CONTINUATION COVERAGE, WHEN WILL MY COVERAGE BEGIN AND HOW LONG WILL THE COVERAGE LAST?

If elected, COBRA continuation coverage will begin on [enter date] and can last until [enter date].

[Add, if appropriate: You may elect any of the following options for COBRA continuation coverage: [list available coverage options].

Continuation coverage may end before the date noted above in certain circumstances, like failure to pay premiums, fraud, or the individual becomes covered under another group health plan.

CAN I EXTEND THE LENGTH OF COBRA CONTINUATION COVERAGE?

If you elect continuation coverage, you may be able to extend the length of continuation coverage if a qualified beneficiary is disabled, or if a second qualifying event occurs. You must notify [enter name of party responsible for COBRA administration] of a disability or a second

qualifying event within a certain time period to extend the period of continuation coverage. If you don't provide notice of a disability or second qualifying event within the required time period, it will affect your right to extend the period of continuation coverage.

For more information about extending the length of COBRA continuation coverage visit https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/an-employees-guide-to-health-benefits-under-cobra.pdf.

HOW MUCH DOES COBRA CONTINUATION COVERAGE COST?

COBRA continuation coverage will cost: [enter amount each qualified beneficiary will be required to pay for each option per month of coverage and any other permitted coverage periods.]

Other coverage options may cost less. If you choose to elect continuation coverage, you don't have to send any payment with the Election Form. Additional information about payment will be provided to you after the election form is received by the Plan. Important information about paying your premium can be found at the end of this notice.

You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. You can learn more about the Marketplace below.

WHAT IS THE HEALTH INSURANCE MARKETPLACE?

The Marketplace offers "one-stop shopping" to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you'll also learn if you qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov.

Coverage through the Health Insurance Marketplace may cost less than COBRA continuation coverage. Being offered COBRA continuation coverage won't limit your eligibility for coverage or for a tax credit through the Marketplace.

WHEN CAN I ENROLL IN MARKETPLACE COVERAGE?

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based health coverage is a "special enrollment" event. **After 60 days your special enrollment period will end and you may not be able to enroll, so you should take action right away**. In addition, during what is called an "open enrollment" period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

IF I SIGN UP FOR COBRA CONTINUATION COVERAGE, CAN I SWITCH TO COVERAGE IN THE MARKETPLACE? WHAT ABOUT IF I CHOOSE MARKETPLACE COVERAGE AND WANT TO SWITCH BACK TO COBRA CONTINUATION COVERAGE?

If you sign up for COBRA continuation coverage, you can switch to a Marketplace plan during a Marketplace open enrollment period. You can also end your COBRA continuation coverage early and switch to a Marketplace plan if you have another qualifying event such as marriage or birth of a child through something called a "special enrollment period." But be careful though - if you terminate your COBRA continuation coverage early without another qualifying event, you'll have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once you've exhausted your COBRA continuation coverage and the coverage expires, you'll be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended.

If you sign up for Marketplace coverage instead of COBRA continuation coverage, you cannot switch to COBRA continuation coverage once your election period ends.

CAN I ENROLL IN ANOTHER GROUP HEALTH PLAN?

You may be eligible to enroll in coverage under another group health plan (like a spouse's plan), if you request enrollment within 30 days of the loss of coverage.

If you or your dependent chooses to elect COBRA continuation coverage instead of enrolling in another group health plan for which you're eligible, you'll have another opportunity to enroll in the other group health plan within 30 days of losing your COBRA continuation coverage.

CAN I ENROLL IN MEDICARE INSTEAD OF COBRA CONTINUATION COVERAGE AFTER MY GROUP HEALTH PLAN COVERAGE ENDS?

In general, if you don't enroll in Medicare Part A or B when you are first eligible because you are stillemployed, after the initial enrollment period for Medicare Part A or B, you have an 8-month special enrollment period to sign up, beginning on the earlier of

- The month after your employment ends; or
- The month after group health plan coverage based on current employment ends.

If you don't enroll in Medicare Part B and elect COBRA continuation coverage instead, you may have to pay a Part B late enrollment penalty and you may have a gap in coverage if you decide you want Part B later. If you elect COBRA continuation coverage and then enroll in Medicare Part A or B before the COBRAcontinuation coverage ends, the Plan may terminate your continuation coverage. However, if Medicare Part A or B is effective on or before the date of

the COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even if you enroll in the other part of Medicare after thedate of the election of COBRA coverage.

If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA will pay second. Certain COBRA continuation coverage plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.

For more information visit https://www.medicare.gov/medicare-and-you.

WHAT FACTORS SHOULD I CONSIDER WHEN CHOOSING COVERAGE OPTIONS?

When considering your options for health coverage, you may want to think about:

- Premiums: Your previous plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive.
- Provider Networks: If you're currently getting care or treatment for a condition, a change in your health coverage may affect your access to a particular health care provider. You may want to check to see if your current health care providers participate in a network as you consider options for health coverage.
- Drug Formularies: If you're currently taking medication, a change in your health coverage may affect your costs for medication – and in some cases, your medication may not be covered by another plan. You may want to check to see if your current medications are listed in drug formularies for other health coverage.
- Severance payments: If you lost your job and got a severance package from your former employer, your former employer may have offered to pay some or all of your COBRA payments for a period of time. In this scenario, you may want to contact the Department of Labor at 1-866-444-3272 to discuss your options.
- Service Areas: Some plans limit their benefits to specific service or coverage areas – so if you move to another area of the country, you may not be able to use your benefits. You may want to see if your plan has a service or coverage area, or other similar limitations.
- Other Cost-Sharing: In addition to premiums or contributions for health coverage, you probably pay copayments, deductibles, coinsurance, or other amounts as you use your benefits. You may want to check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

FOR MORE INFORMATION

This notice doesn't 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 questions about the information in this notice, your rights to coverage, or if you want a copy of your summary plan description, contact [*enter name of party responsible for COBRA administration for the Plan, with telephone number and address*].

For more information about your rights under the Employee Retirement Income Security Act (ERISA), including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, visit the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) website at www.dol.gov/ebsa or call their toll-free number at 1-866-444-3272. For more information about health insurance options available through the Health Insurance Marketplace, and to locate an assister in your area who you can talk to about the different options, visit www.HealthCare.gov.

KEEP YOUR PLAN INFORMED OF ADDRESS CHANGES

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

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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 Name and Address*]

This Election Form must be completed and returned by mail [*or describe other means of submission and due date*]. If mailed, it must be post-marked no later than [*enter date*].

If you don't submit a completed Election Form by the due date shown above, you'll 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 submit 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 submit 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 elected:** _____**]**

b. _____

[*Add if appropriate*] **Coverage option elected:** _____**]**

c. _____

[*Add if appropriate*] **Coverage option elected:** _____**]**

_____

Signature **Date**

_____ __

Print Name **Relationship to individual(s) listed above**

_____

_____

_____ ___

Print Address **Telephone number**

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Important Information about Payment

FIRST PAYMENT FOR CONTINUATION COVERAGE

You must make your first payment for continuation coverage no later than 45 days after the date of your election (this is the date the Election Notice is postmarked). If you don't make your first payment in full no later than 45 days after the date of your election, you'll lose all continuation coverage rights under the Plan. You're responsible for making sure that the amount of your first payment is correct. You may contact [*enter appropriate contact information, e.g., the Plan Administrator or other party responsible for COBRA administration under the Plan*] to confirm the correct amount of your first payment.

PERIODIC PAYMENTS FOR CONTINUATION COVERAGE

After you make your first payment for continuation coverage, you'll have to make periodic payments for each coverage period that follows. 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 [*enter due day for each monthly payment*] for that coverage period. [*If Plan offers other payment schedules, enter with appropriate dates:* You may instead make payments for continuation coverage for the following coverage periods, due on the following dates:]. 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 [*select one:* will *or* 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'll be given a grace period of 30 days after the first day of the coverage period [*or enter longer period permitted by Plan*] to make each periodic payment. You'll get continuation coverage for each coverage period as long as payment for that coverage period is made before the end of the grace period. [*If Plan suspends coverage during grace period for nonpayment, enter and modify as necessary:* If you pay a periodic payment later than the first day of the coverage period to which it applies, but before the end of the grace period for the coverage period, your coverage will be suspended as of the first day of the coverage period and then retroactively reinstated (going back to the first day of the coverage period) when the periodic payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.]

If you don't make a periodic payment before the end of the grace period for that coverage period, you'll lose all rights to continuation coverage under the Plan.

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

[*enter appropriate payment address*]

(End of Notice)

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Conversion Notice

TO: **COBRA Continuees**

FROM:

DATE:

RE: **Termination of COBRA Coverage**

Your COBRA coverage will end on_____. You have the option to convert your coverage under the current medical plan to individual coverage with the current medical carrier.

The individual conversion policy will not require you to complete a health questionnaire. You will be automatically accepted without pre-existing condition waiting periods upon your payment of premium to the current medical carrier. The individual policy will have a higher premium.

Questions and an application for coverage on this individual conversion policy should be directed to the current medical carrier. If you have any questions regarding other individual health plans that may be available to you, contact a Gallagher Benefit Services representative at *[enter Gallagher Benefit Services phone number here]*.

You may also be able to get coverage through the Health Insurance Marketplace. You can learn more about the Marketplace below.

What is the Health Insurance Marketplace?

The Marketplace offers “one-stop shopping” to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you’ll also learn if you qualify for free or low-cost coverage from Medicaid or the Children’s Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov.

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[*Note to Drafter: Please be aware that this Conversion Notice should only be used if your insurance carrier provides conversion coverage. If you have a self-funded benefit plan, it is not likely that you provide conversion coverage. Please check with your Gallagher consultant before using this Conversion Notice.*]

(End of Notice)

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Notice of Insufficient Payment

TO:

FROM:

DATE:

RE: **Insufficient COBRA Premium Payment**

Premium owed for_____COBRA coverage	$_____
Payment received _____	$_____

Thank you for your recent payment. The payment we received above for your COBRA coverage was not for the full amount owed.

We must receive the balance due by_____. If we do not receive full payment by that date, you will lose COBRA coverage for the month of_____,_____and all later months.

If you lose COBRA coverage, it cannot be reinstated.

Please contact us if you have any questions or feel this notice has reached you in error.

(End of Notice)

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[Employer Letterhead]

Notice of Unavailability of Coverage

TO: [*Name of Subscribers requesting COBRA Coverage or Extension of COBRA Coverage*]

[*Address of Subscribers*]

FROM: [*Name of Appropriate Representative at Plan Administrator*], acting on behalf of the [*Name of Employer*], **the Plan Administrator for the** [*Name of Plan or Plans, if more than one*]**, (the "Plan")**

DATE:

RE: **Unavailability of COBRA Coverage**

We received your Notice on [*Date of receipt of Notice*] requesting [COBRA coverage *or* extension of COBRA coverage] under the [*Name of Plan*]. A summary of your request is stated below:

- Requested Action: [*Describe the action requested by the subscriber or potential qualified beneficiary. This could be a request for COBRA coverage or a request for an extension of current COBRA coverage. If so, make certain to state the length of time requested if it was stated.*]
- Persons affected: [*List by name those covered by the request*]
- Reason for the request: [*This could be many different reasons…divorce or pending divorce, cancellation of coverage, Medicare entitlement, potential disability without Social Security Determination, or any other reason listed in the Notice provided by the subscriber.*]
- Your notice was reviewed by [*Enter Name and title of Individual authorized at plan administrator to review these requests for coverage*], acting on behalf of [*Name of Employer*], the Plan Administrator for the Plan.
- Determination by Plan Administrator: It has been determined that COBRA coverage [*or extended COBRA coverage, if applicable*] is not available.
- Unavailability Applies to: [*List those for whom COBRA coverage is not available. It may not be the same list of individuals as listed above in the request*].
- Reason for Determination of Unavailability of Coverage: He [*or She or They*] has not experienced a qualifying event [*or second qualifying event*] under the Plan. [*Explain why. This may be because a divorce is not final as one example. If further information or a subsequent event, such as a final divorce decree, might change the decision, mention that as well.*]
- Coverage End Date: Your coverage will terminate on [*Date of termination of coverage or COBRA coverage*], subject to continuing plan eligibility requirements and timely payment of premium.

Please notify us immediately if any of the individuals listed above in our determination does not reside with you at the address listed on this Notice.

You may be able to get coverage through the Health Insurance Marketplace. You can learn more about the Marketplace below.

What is the Health Insurance Marketplace?

The Marketplace offers "one-stop shopping" to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you'll also learn if you qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov.

When can I enroll in Marketplace coverage?

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based health coverage is a "special enrollment" event. **After 60 days your special enrollment period will end and you may not be able to enroll, so you should take action right away.** In addition, during what is called an "open enrollment" period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

If you have any questions regarding the information in this Notice, you should contact

[*Name, address, and phone number of individual to contact*].

(End of Notice)

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[Employer Letterhead]

Notice of Early Termination of COBRA Coverage

TO: [*Name of Qualified Beneficiaries terminated from COBRA coverage*]

[*Address of Same*]

FROM: [*Name of Appropriate Representative at Plan Administrator*], acting on behalf of the [*Name of Employer*]**, the Plan Administrator for the** [*Name of Plan or Plans, if more than one*]**, (the "Plan")**

DATE:

RE: **Termination of COBRA Coverage**

This is notice that COBRA coverage under the [*Name of Plan*] terminated on [*Date of termination of coverage*] for the following individuals:

[*List the names again of the qualified beneficiaries*]

COBRA coverage is terminating before the maximum coverage period ends, for the following reason:

- ❑ Required premium was not paid in full on time
- ❑ Individual(s) named above became covered under another group health plan that does not impose a preexisting condition exclusion for a preexisting condition of the individual(s)
- ❑ Individual(s) named above became enrolled in Medicare
- ❑ Employer ceased to provide any group health plan for its employees
- ❑ Individual(s) named above became entitled to a 29-month maximum coverage period due to a disability of a family member, and the Social Security Administration has made a final determination that the family member is no longer disabled
- ❑ Employer no longer offers any group health plan
- ❑ For cause: [*State reason here*]

Claims incurred after the termination date shown above may have been paid on behalf of the individual(s) named above, and premiums may have been paid for COBRA coverage for periods after the termination date. If that is the case, premiums for periods after the termination date will be refunded, and reimbursement of benefits paid for claims incurred after the termination date will be required. [*Insert information concerning any right to conversion coverage under the Plan, if any.*]

Please notify us immediately if any of the individuals named above does not reside with you at the address listed on this Notice.

[Note: If the reason for termination is the employer's ceasing to provide any group health plan or the individual determined to be no longer disabled as determined by Social Security add the following language.]

You may be able to get coverage through the Health Insurance Marketplace. You can learn more about the Marketplace below.

What is the Health Insurance Marketplace?

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To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

If you have any questions regarding the information in this Notice, you should contact

[*Name, address, and phone number of individual to contact*].