

LEGISLATIVE BRIEF

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Final COBRA Regulations: Notice & Disclosure Rules

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that employers provide employees and dependents who would otherwise lose group health benefits due to a qualifying event with an opportunity to continue group health insurance coverage. COBRA also requires that employers inform employees and their families covered under a health plan of their COBRA rights. In 2004, the Department of Labor (DOL) released final regulations on COBRA's notice and disclosure requirements, which became effective for plan years beginning on or after Nov. 26, 2004.

This Legislative Brief summarizes COBRA's notice and disclosure obligations contained in the DOL's final regulations and includes a chart outlining the timing and content requirements for the various COBRA notices.

GENERAL NOTICE

- The final regulations include a model General Notice, clarify what information must be included within a General Notice, and establish a time period in which this information must be provided to individuals covered under the health plan.
- The regulations confirm that a single notice may be provided to the covered employee and spouse, if they reside at the same address. However, hand-delivery of the General Notice at the workplace to the covered employee does not constitute delivery to the spouse.
- The plan administrator may incorporate the General Notice within the summary plan description provided the summary plan description a) contains all of the information required to be included within the General Notice, and b) is delivered in a manner that complies with the delivery rules applicable to COBRA notices. *Note: the rules related to electronic delivery of COBRA notices are more stringent than those applicable to summary plan descriptions.*

EMPLOYER OBLIGATIONS

- The employer is required to notify the plan administrator of the occurrence of the following qualifying events: employee's death, termination of employment (other than by reason of gross misconduct), reduction of hours of employment, Medicare entitlement or employer filing of Chapter 11 bankruptcy.
- The employer is required to notify the plan administrator within 30 days of the later of the date of the qualifying event or the date on which the qualified beneficiary would lose coverage as a result of the qualifying event.
- The notice must include sufficient information to enable the plan administrator to determine the plan, covered employee, qualifying event and date of the qualifying event.



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PLAN ADMINISTRATOR OBLIGATIONS

- The regulations set forth timing and content requirements for election notices. A model election notice is also included. (Update: On May 8, 2013, the DOL issued an updated model election notice. The DOL updated the model notice to include information about coverage options that will be available under the health insurance exchanges, beginning in 2014.)
- Plan administrators are required to notify ineligible individuals that apply for COBRA that continuation coverage is not available.
- Plan administrators are also obligated to notify qualified beneficiaries when continuation coverage terminates before the end of the maximum period for such coverage.

QUALIFIED BENEFICIARY & COVERED EMPLOYEE OBLIGATIONS

- Covered employees and qualified beneficiaries are required to follow the reasonable procedures established by the plan administrator.
- Reasonable procedures should be described within the summary plan description and should specify a) the person designated to receive the notice, b) the means the qualified beneficiary must use for giving notice, and c) the required content of the notice. Plans may require the employee or qualified beneficiary to use a specific form, if the form is readily available without cost.
- Qualified beneficiaries are required to notify the plan administrator within 60 days of the later of a) the date of any of the following qualifying events, b) the date on which they would lose coverage as a result of the qualifying event, or c) the date on which they were first notified of their obligation and of the procedures to provide notice:
 1. Divorce or legal separation of a covered employee from his or her spouse; and
 2. Dependent child's loss of dependent status under the plan.
- Qualified beneficiaries are required to notify the plan administrator within 60 days of the date of a second qualifying event that would entitle the qualified beneficiary to extend continuation coverage beyond 18 months.
- Qualified beneficiaries that are determined to be disabled by the Social Security Administration (SSA) as of or within 60 days of a termination or reduction in hours of employment are required to notify the plan administrator within 60 days of the receipt of the SSA determination and before the end of the original 18-month continuation period.¹
- Qualified beneficiaries provided additional coverage as a result of a disability are required to notify the plan administrator within 30 days of any final determination that the qualified beneficiary is no longer disabled.

¹Qualified beneficiaries who were determined disabled by the SSA prior to the qualifying event are considered to meet the statutory requirement of being disabled "within the first 60 days of COBRA coverage." In this case, the qualified beneficiary is required to provide notice of the SSA disability determination within 60 days of the later of a) the date of the qualifying event, b) the date on which the qualified beneficiary would lose coverage as a result of the qualifying event, or c) the date on which the qualified beneficiary is informed of its obligation and of the procedures to provide notice of the disability.

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FINAL COBRA REGULATIONS & MODEL DOL FORMS

- To view the final regulations visit www.dol.gov/ebsa/regs/fedreg/final/2004011796.pdf
- To view the model General Notice, including technical corrections, visit www.dol.gov/ebsa/modelgeneralnotice.doc
- To view the revised model Election Notice, including technical corrections, visit www.dol.gov/ebsa/modelectionnotice.doc

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NOTICES	TIMING OF NOTICE	CONTENT REQUIREMENTS
General Notice	<p>Within 90 days after coverage begins.</p> <p><u>Note:</u> New dependents added after the employee's initial enrollment must be provided a General Notice within 90 days from the date their coverage begins.</p> <p><u>Note:</u> If a covered individual experiences a qualifying event within 90 days of becoming covered under the plan, an Election Notice should be provided to the covered individual. The General Notice isn't required.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant, and shall contain all of the following:</p> <ol style="list-style-type: none"> 1. Name of plan, 2. Name, address, and telephone number of party responsible for administering COBRA, 3. General description of coverage, 4. Classes of individuals that can be qualified beneficiaries (QBs), 5. Explanation of the types of qualifying events, 6. Obligation of employer to notify plan administrator of certain qualifying events, 7. Maximum coverage periods, including ability to qualify for extensions, 8. Description of the applicable premium that will be changed, 9. Explain QB's responsibility to notify employer of certain qualifying events (divorce, legal separation, loss of dependent status, disability determination by SSA), 10. Explain QB's continuing obligation to notify employer of a change in address or eligibility (becoming enrolled in Medicare, death of covered employee, divorce, legal separation, determined disabled by the SSA), and 11. A statement that the notice does not fully describe all COBRA rights and that further information can be received from the employer or plan administrator.
Employer's Notice to Plan Administrator of Qualifying Event	<p>Within 30 days after a qualifying event or loss of health coverage due to the qualifying event, whichever is later.</p>	<ol style="list-style-type: none"> 1. Plan name, 2. Covered employee/QB, 3. Type of qualifying event, and 4. Date of the qualifying event (including date of loss of coverage).
Notice of Unavailability of COBRA	<ul style="list-style-type: none"> • Within 14 days of receipt of the notice of qualifying event. • Where the employer is also the plan administrator, within 44 days of the later of a) the date of the qualifying event, or b) the date on which the QB loses coverage due to the qualifying event. 	<p>In the event that the administrator receives a notice of a qualifying event from an individual not entitled to COBRA, the plan administrator must notify the individual of the reason why the individual is not entitled to COBRA.</p>

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<p>Early Termination Notice</p>	<p>As soon as practicable following the administrator's determination that continuation coverage shall terminate.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ol style="list-style-type: none"> 1. The reason COBRA has been terminated earlier than the end of the maximum coverage period, 2. The date of termination of coverage, and 3. Description of any rights the QB may have under the plan or under applicable law to elect alternative group or individual coverage, such as a conversion right.
<p>Plan Administrator's Notice to Covered Individual of Right to Elect COBRA</p>	<ul style="list-style-type: none"> • Within 14 days of receipt of the notice of qualifying event. • Where the employer is also the plan administrator, within 44 days of the later of a) the date of the qualifying event, or b) the date on which the QB loses coverage due to the qualifying event. 	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ol style="list-style-type: none"> 1. Name of the plan, 2. Name, address, and telephone number of the COBRA administrator, 3. Identification of the qualifying event, 4. Identification of each QB entitled to elect COBRA, 5. The date coverage will terminate unless COBRA is elected, 6. Explanation of how and when each QB may independently elect COBRA, 7. The plan's procedures for electing COBRA, including the time period in which the election must be made and the date the election must be made, 8. An explanation of the consequences of failing to elect or waiving COBRA, including any impact on future rights to portability, guaranteed access to individual health coverage, and special enrollment, and an explanation of how to revoke a waiver of COBRA, 9. A description of the coverage available under COBRA, including the date COBRA would commence (may refer to SPD), 10. An explanation of the maximum period for which COBRA will be available, including the termination date and the events that might cause COBRA to be terminated earlier, 11. An explanation of when COBRA may be extended due to a second qualifying event or determination of disability, including the QB's obligation to provide the plan administration with notice of the events, 12. Applicable COBRA premium for each QB, 13. A description of the due dates for payments, the QB's right to pay on a monthly basis, grace periods, the address to which payments should be sent, and the consequences of delayed payment or non-payment, 14. An explanation of the importance of keeping the plan administrator informed of the current addresses of all beneficiaries under the plan, and 15. A statement that the notice does not fully describe COBRA or other rights under the plan and that more complete information regarding such rights is available in the plan's SPD or from the plan administrator,

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Employee/Qualified Beneficiary's Notice of Qualifying Event to Plan Administrator	<ul style="list-style-type: none">• Within 60 days after the qualifying event or loss of health coverage, whichever is later (e.g. divorce, legal separation, or loss of dependent status).• During original 18 months and within 60 days of determination of disability by SS administration.• Within 30 days QB is no longer disabled.	<p>A plan may establish reasonable requirements for the content of any notice provided by the employee or QB. A notice provided within the time frames stated that includes the following must be considered effective:</p> <ol style="list-style-type: none">1. Plan name,2. Name of covered employee and QBs,3. Qualifying event or disability, and4. Date of qualifying event.
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