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An Updated Guide to COBRA (2011)

Bonnie Jones

Municipal Technical Advisory Service, bonnie.jones@tennessee.edu

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An Updated Guide to COBRA (Consolidated Omnibus Budget Reconciliation Act of 1986)

Bonnie Jones, Human Resource Consultant
August 2011

THE UNIVERSITY of TENNESSEE 
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League



An Updated Guide to COBRA (Consolidated Omnibus Budget Reconciliation Act of 1986)

Bonnie Jones, Human Resource Consultant
August 2011

MTAS OFFICES

Knoxville (Headquarters)..... (865) 974-0411
Johnson City (423) 854-9882
Nashville (615) 532-6827
Jackson (731) 423-3710
Martin (731) 587-7055

www.mtas.tennessee.edu

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By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works,

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*For information on COBRA 2009 and the stimulus funds, visit the following publication entitled:
COBRA Premium Reduction Extension Provisions by Bonnie Jones.*

BACKGROUND AND CLIMATE

The year was 1985, and America faced a huge budget deficit. Add to that, more and more Americans were finding themselves uninsured and being denied care at their community hospitals. To address the growing budget deficit and uninsured rate, Congress enacted the Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1986.

LANDMARK FEDERAL LEGISLATION

Congress passed COBRA on April 7, 1986. Among other things, COBRA amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act (PHSA), all of which mandated that most group health plans offer a continuation of health insurance when employees and beneficiaries would otherwise lose group health coverage.

Public Health Service Act (PHSA)

The PHSA contains the provisions of the Consolidated Omnibus Budget Reconciliation Act that govern continuation of coverage under government-sponsored group health plans.

The COBRA statute contains provisions that bridge the gap to group health coverage created when employees experience certain life changes. COBRA allows qualified employees and beneficiaries the ability to continue group health insurance after losing coverage due to certain “qualifying events.” Prior to this statute becoming law, employees and their dependents were at risk of losing group health coverage when the employee carrying health insurance changed jobs, divorced, or

experienced other qualifying events. COBRA requires a temporary continuation of health benefits at the group rate, which generally is the entire cost of continuation coverage, including the employee contribution plus the employer contribution plus any administration fee.

INTENT OF LEGISLATION

While the intent of the legislation seemed simple — give workers the chance to continue their health insurance under circumstances that would normally cause them and their dependents to lose coverage — the result was cumbersome legislation that requires health plan administrators to perform a complex series of actions to ensure compliance with COBRA regulations. Employers and plan administrators are urged to use caution administering COBRA and to document carefully the timeliness of all notices sent or received.

COBRA RULES AND REGULATIONS

COBRA has been formally amended nine times since 1986. These major amendments include:

- Omnibus Budget Reconciliation Act of 1986;
- Tax Reform Act of 1986;
- Technical and Miscellaneous Revenue Act of 1988;
- Omnibus Budget Reconciliation Act of 1989;
- Omnibus Budget Reconciliation Act of 1990;
- Omnibus Budget Reconciliation Act of 1993;
- Small Business Job Protection Act of 1996;
- Health Insurance Portability and Accountability Act of 1996; and
- Trade Act of 2002.



In addition, the IRS has issued a number of rulings, guidance, and clarifications dealing with COBRA over the years. In May of 2003 the IRS came out with the long-awaited proposed regulations, which did not differ drastically from the final rules that were released in May of 2004.

Final Rules on COBRA Notice Procedures (May 26, 2004) were effective for most plans January 1, 2005. These new final rules required plan administrators to take the following steps:

- Revise the initial general COBRA notice;
- Revise COBRA election forms;
- Revise employer-provided notice of qualifying event;
- Update applicable summary plan descriptions;
- Update related plan documents; and
- Add two additional notices to their COBRA administration.

COBRA AND LOCAL GOVERNMENT HEALTH PLANS

While ERISA generally does not govern the administration of local government health plans, amendments to PHSa provide that local governments offer the continuation of coverage. State and local government health plans are subject to the continuation provisions contained in PHSa but not the provisions contained in ERISA or the Code. PHSa provides virtually identical coverage requirements with the exception of financial penalties or an enforcement scheme. However, courts do look to ERISA-COBRA cases for guidance with PHSa-COBRA administration and rulings.

ELIGIBILITY FOR COBRA COVERAGE

To be eligible for COBRA continuation coverage, a qualified beneficiary must be enrolled in the employer's group health plan **on the day before** the qualifying event takes place. Simply stated, if a person is not enrolled in a plan, there is no coverage to lose. But once a person is a qualified beneficiary, he or she may be able to enroll previously non-covered individuals. A "qualified

beneficiary" can be one of the following:

- A "covered employee" defined as a current or former employee (including self-employed persons, independent contractors and other nontraditional employees) covered under a group health plan;
- The spouse of a covered employee; or
- The dependent child of a covered employee.

Two groups of people who can never be qualified beneficiaries are (1) non-resident aliens with no U.S. source of income and (2) individuals who are not otherwise qualified beneficiaries who become covered under a group health plan because of another qualified beneficiary's election. Any relative of these non-resident aliens also is not a qualified beneficiary solely because of the relationship to the non-resident alien.

QUALIFIED BENEFICIARY

A qualified beneficiary (QB) may be any employee, former employee, spouse or dependent child who was covered under the group plan on the day before the qualifying event date. In certain situations, a retired employee and his or her dependents also may be considered QBs.

Qualified Beneficiary (QB)

QBs are individuals who are eligible to continue coverage based on certain qualifying events. Typically, this is the employee as well as any covered dependent(s) such as a spouse or child(ren). For COBRA purposes, each covered person is considered a separate QB.

QBs may include:

- Employee (current and former);
- Employee's spouse;
- Employee's dependent child (includes QMCSO*);
- Employee's adopted child born to or placed for adoption during COBRA period; and
- Retired employees and dependents.

**Qualified Medical Child Support Order*



The regulations specify that self-employed persons, agents, contractors and corporate directors are covered employees. However, these people are considered covered employees only if the employer maintains a plan covering traditional, common-law employees.

COVERED PERSONS WHO ARE NOT QUALIFIED BENEFICIARIES

Certain individuals may be added to a qualified beneficiary's health plan coverage but not be entitled to the same rights as a qualified beneficiary. For example, a former dependent child of a covered employee could enroll under a group health plan as a qualified beneficiary, marry, opt to cover a new spouse, have a child and opt to cover the child all within 36 months of COBRA continuation coverage. Thus an employee's grandchild could be enrolled in an employer's group health plan under COBRA but not as a qualified beneficiary. The only way the grandchild could become covered is if the former dependent child, a qualified beneficiary, so elects. The former dependent child's new spouse would not have any election rights nor would the grandchild.

Another group of individuals who could become covered under COBRA continuation coverage but who are not qualified beneficiaries are former qualified beneficiaries. For example, employee Smith is married and terminates employment but elects to continue only single coverage. His spouse declines to continue any coverage. During a subsequent open-enrollment period, Smith enrolls his spouse. If the couple is divorced within the 18-month continuation period, Smith's spouse could not continue health benefits because she is not a qualified beneficiary.

QUALIFYING EVENTS REQUIRING COBRA

The following list of qualifying events should trigger the COBRA notification process.

- Death of a covered employee;

- Voluntary or involuntary termination of the covered employee's employment (except for gross misconduct);
- Reduction of hours worked by covered employee;
- Divorce or legal separation of the covered employee from the employee's spouse;
- Employee's entitlement to Medicare;
- A dependent child ceasing to be a dependent under the eligibility requirements (i.e., age, student status, marriage); and
- An employer's bankruptcy.

SECOND QUALIFYING EVENTS

A second qualifying event is a qualifying event that occurs during the 18-month period following the date of any employee's termination or reduction in hours. The beneficiary of that second qualifying event will be entitled to a total of 36 months of continued coverage. The period will be measured from the date of the loss of coverage caused by the first qualifying event.

According to direct information from the U.S. Department of Health and Human Services:

Second qualifying events may include the death of the covered employee, divorce or legal separation from the covered employee, the covered employee becoming entitled to Medicare benefits (under Part A, Part B or both), or a dependent child ceasing to be eligible for coverage as a dependent under the group health plan.

The following conditions must be met in order for a second event to extend a period of coverage:

- (1) *The initial qualifying event is the covered employee's termination or reduction of hours of employment, which calls for an 18-month period of continuation coverage;*
- (2) *The second event that gives rise to a 36-month maximum coverage period occurs during the initial 18-month period of continuation coverage (or within the 29-month period of coverage if a disability extension applies);*



- (3) The second event would have caused a qualified beneficiary to lose coverage under the plan in the absence of the initial qualifying event;
- (4) The individual was a qualified beneficiary in connection with the first qualifying event and is still a qualified beneficiary at the time of the second event; and
- (5) The individual meets any applicable COBRA notice requirement in connection with a second event, such as notifying the plan administrator of a divorce or a child ceasing to be a dependent under the plan within 60 days after the event.

If all conditions associated with a second qualifying event are met, the period of continuation coverage for the affected qualified beneficiary (or beneficiaries) is extended from 18 months (or 29 months) to 36 months.

COBRA PREMIUMS

COBRA premiums typically are set at 102 percent of the total cost of the plan. The plan can include the premium costs paid by employees and the employer, plus an additional two percent administration fee.

COBRA PREMIUM

This is the amount the QB pays for continuation coverage. It usually is equivalent to the total employer premium plus a two percent administration charge.

EXAMPLE COBRA RATES

Note: These numbers are hypothetical and have no relation to actual COBRA premiums. This is for illustration purposes only.

ACTIVE EMPLOYEE RATES (INDIVIDUAL HEALTH COVERAGE)

Employee Pays	\$100 per month
Employer Pays	\$500 per month
Total Cost	\$600 per month

COBRA RATES (Individual Health Coverage)

Employee pays \$600 per month plus administration fees totaling \$612 per month. This includes employee and employer contributions plus a COBRA administration fee.

The Employer Contribution	\$500 per month
The Employee Contribution	\$100 per month
Plus a Two Percent Administration Fee	\$12 per month
Total COBRA Cost	\$612 per month

This means group health coverage for COBRA participants usually is significantly more expensive than health coverage for active employees, since the employer usually pays a part of the premium for active employees, and COBRA participants generally pay the entire premium themselves. However, by law coverage under COBRA cannot exceed 102 percent of the actual cost of the coverage to the group plan. The one exception comes in the case of disabled beneficiaries who receive the 11-month extension, in which case the premium can be as high as 150 percent. In the case that a QB is eligible for an additional 11 months (beyond the original 18 months) of COBRA he could be charged up to 150 percent of the cost of the coverage for those additional 11 months.

Nevertheless, continuation of group health coverage under COBRA ordinarily is less expensive than individual health coverage and generally offers a richer benefit with less risk.

The plan must allow employees and QBs to pay the COBRA premiums on a monthly basis and may allow the employee to make payments on another schedule such as quarterly or weekly.

COBRA premiums generally are increased if the costs of health benefits or administration fees increase, but they typically are fixed for at least the coming year.



BENEFITS SUBJECT TO COBRA

Qualified beneficiaries must be offered coverage identical to that available to active employees and their families covered under the group health plan. In other words, a qualified beneficiary generally is entitled to the same coverage he or she had immediately before qualifying for continuation of coverage under COBRA.

If a former employee had medical, dental, vision, and prescription benefits under single or multiple health plans, this person would have the right under COBRA to elect to continue coverage in any or all of those plans. Any change in coverage under the plans for active employees also applies to individuals covered under COBRA, and COBRA participants must be allowed to make the same choices given to non-COBRA participants in the health plan.

DURATION OF COBRA CONTINUATION COVERAGE

Qualifying events are those that cause the qualified beneficiary to lose coverage under the plan.

As shown in the following schedule, qualified beneficiaries generally can continue health coverage for up to 18 months for themselves and their families. **In some cases, coverage is extended to 36 months.**

COBRA coverage can be terminated before these maximum periods if premiums are not paid on time or if the employer ceases to maintain a group health plan for its employees.

Some plans allow COBRA participants to convert group health coverage to an individual policy when the COBRA continuation period ends. The option to enroll in a conversion health plan must be given at least 180 days before COBRA coverage ends and may vary by state and type of plan offered.

OPEN ENROLLMENT/TRANSFER PERIOD

Plan sponsors may forget that a change in the benefits under the plan for active employees will apply also to qualified beneficiaries. It is important

QUALIFYING EVENT	QUALIFIED BENEFICIARIES	MAXIMUM PERIOD OF CONTINUATION
Termination (for reasons other than gross misconduct)	Employee Spouse Dependent children	18 Months*
Employee enrollment in Medicare	Spouse Dependent children	36 Months
Divorce or legal separation	Spouse Dependent children	36 Months
Death of employee	Spouse Dependent children	36 Months
Loss of dependent child status under plan eligibility rules	Dependent children	36 Months

**In certain circumstances, QBs entitled to 18 months of COBRA may become entitled to a disability extension of 11 months (for a total maximum of 29 months) or an extension of 18 months due to the occurrence of a second qualifying event (for a total maximum of 36 months).*



to note that qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment. This means that all COBRA beneficiaries must receive the same opportunity to change plans or enroll in new plans as if they were active employees or plan members.

FMLA and COBRA

Family and medical leave itself is not a qualifying event under COBRA, even though employers are required by FMLA to maintain group health insurance coverage for employees on leave. If an employee on FMLA leave notifies the organization that he or she does not intend to return to work, however, a COBRA qualifying event may occur.

REQUIRED SCHEDULE OF NOTICES

REQUIRED COBRA NOTICES	RESPONSIBLE PARTY	TIME FRAME
<p><u>General COBRA Notice</u></p> <p><i>Consider new hires, open enrollment and special enrollment periods, qualifying events (marriage or addition of domestic partner), implementation of new plan(s), rehires. Consider your cafeteria plans and EAP plans as well.</i></p>	Plan administrator to covered employee and spouse	Within 90 days of coverage becoming effective
<p><u>Employer Qualifying Event Notice</u></p> <p><i>Includes plan information, covered employee, qualifying event and date of qualifying event. Employers have 30 days following date of QE to notify plan administrators. Plan administrators have 14 days following notice of QE to notify QBs. Employers who act as plan administrators have 44 days from the date of the event to notify QBs.</i></p>	Employer to plan administrator	30 days after QE
<p><u>Employee Qualifying Event Notice(s)</u></p> <p><i>Plan sponsors should make sure a reasonable written procedure is in place for employees and QBs to follow at the time of a QE. Employees and QBs then have the responsibility to notify plan administrator within 60 days of a QE. Employees' and QBs' failure to follow the reasonable notice requirements may result in denial of continuation of coverage.</i></p>	Employee or qualified beneficiary to plan administrator	60 days after QE
<p><u>Election Notice</u></p> <p><i>This is the actual offering of COBRA, which provides the employee and QBs the opportunity to elect coverage.</i></p>	Plan administrator to covered employees and QBs	14 days after notice of QE or 44 days (for some QEs)
<p><u>Notice of COBRA Unavailability</u></p> <p><i>New notice required by the May 27, 2004, Final Notice Rules. This notice must be sent when a plan determines that a QB is not eligible for COBRA.</i></p>	Plan administrator to employees and beneficiaries who provide notice of QE	Same as election notice
<p><u>Notice of Early Termination of COBRA</u></p> <p><i>New notice required by the May 26, 2004, Final Notice Rules. This notice must be sent to notify QBs of a termination of benefits if benefits terminate earlier than the full COBRA period. In some cases, this may be combined with HIPAA Certificate of Credible Coverage, which also is required upon termination of benefits.</i></p>	Plan administrator to covered employees and QBs	As soon as practicable once termination of coverage is determined by plan administrator



Some of the notifications described above may not apply if you are administering your COBRA program in-house. The bolded notices represent the critical notifications that employers often must design. Sample forms are available through MTAS.

GENERAL COBRA NOTICE — INITIAL NOTICE

The initial notice usually is the employee's and QB's first notification of COBRA under a group health plan. It typically occurs at the time coverage begins and lets a QB know that he or she loses coverage due to certain qualifying events and that COBRA will be offered.

The plan administrator must send the notice to **the employee and** spouse within 90 days of new coverage. This notice is commonly issued in the plan's Summary Plan Description (SPD), but the employer must ensure the plan's SPD meets timing guidelines and contains minimum requirements of the notice distribution rules. Employers may want to consider posting the SPD on their Internet/ Intranet site as well.

The general notice must be addressed to both employee and spouse. If the spouse resides at a separate address, a notice should be sent separately to the spouse. If dependents reside in a different household, a separate notice also should be sent to those dependents residing separately. If a spouse's coverage becomes effective on a different date than that of the employee, a separate notice must be sent to the spouse.

Hand delivering the notice to employees is acceptable but does not meet the requirements for spousal notification procedures. If an employee or spouse experiences a qualifying event within 90 days of being covered and the general notice has not been sent, it should be sent out at the same time as the election notice. If administrators are using a generic notice they must be sure to include the name and specific contact information of the person whom the qualified beneficiary may contact

with further questions and request additional plan information.

✓ **DOL MODEL AVAILABLE – YES**

EMPLOYER AND PLAN ADMINISTRATOR QUALIFYING EVENT NOTICE

Must be sent from **employer to plan administrator** within 30 days after the qualifying event and must contain information about the plan, covered employee, and qualifying event, including type and date of event. Employers have 30 days following the date of the QE to notify plan administrators. Plan administrators have 14 days to then notify the QBs, and if the employer is also the plan administrator the notice must be provided within 44 days of the QE.

✓ **DOL MODEL AVAILABLE – NO**

EMPLOYEE QUALIFYING EVENT NOTICES

Employees and QBs must notify plan administrators of qualifying events. In order for employees and QBs to understand their responsibility employers must ensure that employees and QBs are notified of the "reasonable procedures" for QBs to follow when furnishing the notice(s). It is advisable for employers and plan administrators to include these notice requirements in the summary plan description and general notice (if sent separately). It also is advisable to remind employees frequently of their responsibilities (i.e., notifying plan administrator when there is an address change or QE). Employees and QBs must notify the plan administrator within 60 days of the qualifying event.

✓ **DOL MODEL AVAILABLE – NO**

ELECTION NOTICE

Perhaps the most important of all COBRA notices, the election notice, is sent out at the time of the qualifying event and advises employees and QBs of their right to continue coverage under COBRA.



In order for this to go smoothly, the preceding employee qualifying event notices should have been applied, and the employee should have notified the plan administrator of the qualifying event (if applicable).

The election form generally is several pages long and often broken up into different sections to help with clarity. The election notice should contain all of the information individuals need to make a COBRA election.

The regulations require that the election notice contain the following information:

- Plan name, address, contact information, etc.;
- Qualifying event and date;
- Identification of qualifying beneficiaries either by name or status (statement of independent election rights);
- Date coverage is scheduled to terminate;
- Explanation of how to elect COBRA coverage;
- Description of COBRA coverage;
- Description of circumstances under which coverage may be extended;
- Information and procedures for employees and QBs to provide notice of second QE;
- COBRA premium information;
- Information about importance of current addresses; and
- How to get more information and complete plan information.

The election notice must be sent within 14 days of the event date or loss of coverage by the plan administrator to the covered employees and QBs. In 2004, the new rules solidified the long-standing practice that when the employer is also the administrator of the plan, the notice must be sent within 44 days of the event. This 44-day period, however, applies only to terminations of employment, reduction in hours (can include leave without pay or layoff), death of employee, and

employer bankruptcy events. In cases of divorce, legal separation or dependent ineligibility, the notice must be sent within 14 days of the employer receiving notice.

✓ DOL MODEL AVAILABLE – YES

NEW NOTICE OF UNAVAILABILITY

One of the biggest changes of the 2004 Final Rules concerns cases of divorce, legal separation, loss of dependent status or the employee's entitlement to Medicare. This new notice, required by the May 26, 2004, final notice regulations, mandates that the plan administrator send to covered employees and QBs a notice that includes an explanation of why an individual is not eligible for COBRA. This also could apply to events that are classified as "second qualifying events."

If a plan administrator receives notice of a qualifying event, or even a second qualifying event, and determines that the individual is not entitled to COBRA or a disability extension, the plan administrator also must provide a notice to the individual explaining the reason for the denial. This notice does not apply to events in which the employer is required to notify the plan administrator such as termination of employment, reduction in work hours, death or enrollment in Medicare. This must be sent out in the same time frame as the plan would have sent the election notice.

The Department of Labor provides examples of triggering events that would require that the new notice of unavailability be sent. Examples include when the employee or QB fails to notify the employer of one of the above events or does not notify the employer/plan administrator in a timely manner. The employer/plan administrator then would be required to send the notice describing the reason for denying continuation of coverage within 14 days.

✓ DOL MODEL AVAILABLE – NO



NEW NOTICE OF EARLY TERMINATION

This new notice, also required by the May 26, 2004, final notice regulations, mandates that the plan administrator send to covered employees and QBs a notice in the event their COBRA coverage terminates before the maximum COBRA coverage period. The law states that this be sent as soon as practicable.

This notice is sent from the plan administrator to covered employees and QBs and should include the reason for and termination date of health benefits; any rights the QB has to elect alternative group or individual coverage.

An example of the need for a notice of early termination is an employer terminating the health plan which means, in effect, an individual's COBRA coverage would terminate earlier than the full time period for which COBRA was offered to that individual.

✓ DOL MODEL AVAILABLE – NO

HIPAA

The Health Insurance Portability and Accountability Act of 1996 was passed after COBRA went into effect. HIPAA is not directly related to COBRA although HIPAA does make some key changes to COBRA's continuation of coverage.

The Health Insurance Portability and Accountability Act (1966) (HIPAA)

HIPAA'S EFFECT ON COBRA

While HIPAA and COBRA are separate laws, HIPAA does affect COBRA continuation coverage. Effective January 1, 1997, HIPAA made changes to COBRA continuation coverage in the areas of disability extension, definition of qualified beneficiary, and the duration of COBRA continuation coverage.

HIPAA's main purpose was to provide protection against pre-existing condition exclusions if a person

avoids a gap in insurance coverage longer than 63 days (including COBRA coverage).

HIPAA made three primary changes to COBRA:

Continuation period

Under HIPAA legislation, disabled individuals (as deemed so under the Social Security Act) are entitled to 29 months of COBRA continuation coverage if they become disabled during the first 60 days of COBRA coverage. HIPAA also ensures that if the individual entitled to the disability extension has non-disabled family members who are entitled to COBRA continuation coverage, those non-disabled family members also are entitled to the 29 months disability extension. Under the prior law, individuals had to be deemed disabled at time of the initial QE in order to qualify for the 29 months.

Coverage termination

HIPAA made a coordinating change to the COBRA rules so that if a group health plan limits or excludes benefits for pre-existing conditions but because of the new HIPAA rules those limits or exclusions would not apply to (or would be satisfied by) an individual receiving COBRA continuation coverage, the plan providing the COBRA coverage can stop making the coverage available.

Continuation coverage for children

COBRA rules were revised so that children adopted by the covered employee during the COBRA period are considered QBs.

CERTIFICATE OF CREDITABLE COVERAGE

HIPAA regulations require that employers/plan administrators provide employees losing coverage with a certificate of creditable coverage (COC). This certificate shows the length of time the employee/QB was covered and the type of coverage and identifies the individuals covered.



NEW NOTICE OF TERMINATION UNDER HIPAA

The 2004 rules assume that most plans will combine the notice of termination with a HIPAA certificate simply because HIPAA certificates also are required to be issued when an individual loses coverage under a group health plan. This will work assuming the same entity is responsible for both COBRA administration and HIPAA. However, if you are an employer that does not issue both, these would need to be issued separately.

COMPLIANCE AND COMMON AREAS OF LIABILITIES

While this publication is intended to give you a brief overview of COBRA, most human resources professionals know that there are literally endless ways to be considered “non-compliant.”

Here are some tips on sound COBRA administration.

The burden of proof rests on you, the employer.

Even if you have outsourced your COBRA function, there still is plenty of room for error. At the end of the day, the courts will want to know if the notice was sent within the proper time and if it contained the legal minimum requirements. Employers are obligated to prove they fulfilled the COBRA notice requirements. If challenged, employers must prove they mailed the COBRA notice(s), not that the notice has been received. Courts have deemed first class mail sufficient for COBRA purposes. A first class mailing is considered received unless it was returned to the sender.

Postage date is key. Timeliness of mailings (on both ends) is based on postmark date. If an employee fails to pay the premium payment on time coverage is subject to termination. However, if the payment was postmarked within the 30-day grace period, the premium should be considered paid. If the employee/QB elects to hand deliver the payment, it must be in your hands (the plan administrator) by the end of the grace period.

Sometimes this means the plan administrator receives, opens, and processes the payment after the 30-day grace period has expired. For purposes of counting days, Saturdays and Sundays count. However, if the last day of the election period ends on a weekend or holiday, you are required to extend the date until the end of the next business day.

Make a good faith effort to communicate.

Employers are not required to send monthly billing statements, warning letters or lapse notices. Such notices are considered a courtesy and are not required by law; however, improving communication with current employees and future COBRA QBs can go a long way toward avoiding complaints that can turn into formal grievances.

Remember, QBs have the right to change their minds within their election period. A QB can change his mind and revoke the waiver of coverage at any time during the election period. The waiver is not required by law, but if you provide one be sure to include language indicating that the QB has the right to revoke the initial election at any time during the election period.

Last but not least, be careful when dealing with ex-spouses. An ex-employee cannot waive COBRA continuation rights on behalf of his/her spouse. The spouse has the individual right to receive COBRA information and make a determination on coverage. Additionally, in many divorce cases the judge mandates that one spouse be financially responsible for health coverage on the other spouse for a period of time. This does not mean an ex-spouse is eligible to stay on the plan as a regular spouse. It generally means the spouse is required to pay COBRA premiums on behalf of the other spouse or assist the spouse in getting coverage elsewhere.



COBRA AND HEALTH CARE REFORM

Health care reform, also called the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, was passed in March 2010. Health care reform allows dependent children to be re-added and covered under a parent's health plan until their 26th birthday. While Health Care Reform doesn't change the basic rules of COBRA, it will mean many more COBRA qualifying events and notices occurring as dependents are removed from COBRA and other plans and placed back on their parents' plans. This means new notices must be sent, and new dependents will qualify under the provisions of COBRA should they experience a "qualifying event." For some entities, this means adding and transitioning dozens of dependents from COBRA status to active status, or ineligible status to eligible status (which then makes them COBRA-eligible if they experience a qualifying event). This means more notices and requires paying careful attention to COBRA timeframes. A large county in Middle Tennessee reported adding 500 dependents as a result of the new legislation.

COBRA AND W-2 REPORTING

Health care reform also has a provision that will require employers to report the cost of group health plan coverage on each employee's W-2 form each year. Cost is generally to be determined by taking the COBRA premium and subtracting the two percent administrative fee (if applicable). For this purpose, the government also may use COBRA cost as a factor to determine if your group plan is considered a "Cadillac" plan. Cadillac plans will have new excise taxes that go into effect in 2018.

The Department of Labor notes that health care reform did not (1) eliminate or change the COBRA rules; (2) extend the COBRA time periods; or (3) extend the premium subsidy law. For more information on the subsidy law, see MTAS publication entitled *COBRA Premium Reduction Extension Provisions*.

COBRA AND PRE-EXISTING CONDITIONS

Another scenario that may affect employers offering COBRA is if you have a qualified beneficiary who elects COBRA and then becomes eligible for another health plan, he/she generally automatically becomes ineligible and terminated from COBRA. However, if the new health plan excludes certain conditions (pre-existing conditions), the other coverage would not result in COBRA coverage terminating, and the qualified beneficiary would be entitled to keep his/her COBRA plan until it expires or until he/she is no longer eligible.

COBRA AUTHORITY AND SAMPLE FORMS

MTAS Human Resources Consultant Richard Stokes has put together several resources, including sample forms. Please visit our Web site at www.mtas.tennessee.edu to search for these items. Additionally, the Department of Labor has a plethora of information, links, and resources on compliance relative to COBRA.

COBRA continuation coverage laws are administered by several agencies. The departments of Labor and Treasury have jurisdiction over private-sector health group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects public-sector health plans. The Department of Labor's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA.

U.S. Department of Labor
Employee Benefits Security Administration
Division of Technical Assistance and Inquiries
200 Constitution Avenue NW, Suite N-5619
Washington, DC 20210
<http://www.dol.gov>

The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage and premiums in 26 CFR Part 54, Continuation Coverage Requirements Applicable to Group Health Plans. Both the



departments of Labor and Treasury share jurisdiction for enforcement of these provisions.

The Centers for Medicare and Medicaid Services offer information about COBRA provisions for public-sector employees. You can contact the centers at:

Centers for Medicare and Medicaid Services

7500 Security Boulevard

Mail Stop S3-16-26

Baltimore, MD 21244-1850

(410) 786-3000

<http://www.cms.hhs.gov/cobracontinuationofcov/>



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