



# COBRA Benefits

Consolidated Omnibus Budget Reconciliation Act  
of 1985

Published August 2024

## Intention

- Provide temporary access to group health insurance when it would otherwise be lost due to a certain life event
- Shift healthcare cost from the public sector to the private sector
- Reduce lost tax revenues by reducing the number of uninsured medical expenses

## Who must comply?

All group health plans, except governmental plans, 414(e) church plans and small-employers plans.

## What is a small-employer plan?

A plan maintained by an employer who normally employed fewer than 20 employees on a typical business day in the preceding calendar year.

## What about common ownership?

Generally, all employees are counted together for COBRA purposes.

## HOW IS COBRA REINFORCED OR ENFORCED?

ENFORCEMENT	PENALTIES
<p><b>IRS:</b> Enforces coverage requirements  <b>DOL:</b> Enforces notice requirements</p> <p><b>TAMRA Guidelines</b></p> <ul style="list-style-type: none"> <li>• Training</li> <li>• Written Instructions</li> <li>• Program is designed and updated</li> <li>• Monitored by independent auditors</li> </ul> <p><b>Reasonable Case</b></p> <ul style="list-style-type: none"> <li>• TAMRA guidelines incorporated and violations corrected within 30 days</li> </ul> <p><b>Willful Neglect</b></p> <ul style="list-style-type: none"> <li>• Violation not corrected within 30 days and the TAMRA guidelines not incorporated</li> </ul>	<p><b>TAMRA Excise Tax</b></p> <ul style="list-style-type: none"> <li>• \$100 per day, per violation or;</li> <li>• \$200 per day, per violation, if more than one qualified beneficiary <b>in the family</b></li> </ul> <p><b>ERISA Penalty</b></p> <ul style="list-style-type: none"> <li>• \$110 per day, per violation, per qualified beneficiary, with no maximum</li> </ul> <p><b>Finally:</b></p> <ul style="list-style-type: none"> <li>• Failure to follow COBRA regulations can lead to employers having to cover qualified medical claims and penalty fees.</li> </ul>

## Qualified Beneficiaries

### Who is a covered employee?

Someone who is or was provided coverage under a group health plan by being or having been an employee.

### Who is a qualified beneficiary?

Any covered employee, covered spouse or covered dependent child who loses coverage due to a qualifying event or a child born to or adopted by the covered employee during the period of COBRA coverage.

### Who is a covered individual?

Anyone covered by COBRA coverage who is not a qualified beneficiary.

### What rights do qualified beneficiaries have?

They have the same rights, under the same terms and conditions, as a similarly situated non-COBRA beneficiary. Additionally, qualified beneficiaries have independent election rights.

### What about domestic partners?

Domestic partners do not meet the IRS definition of a spouse; therefore, a COBRA offer is not required. However, domestic partners may be added as covered individuals at a later date in the same way they were covered by the active employee before the qualifying event.

## COBRA QUALIFYING EVENTS

EVENT + LOSS OF COVERAGE<sup>1</sup> = QUALIFYING EVENT

NAME OF EVENT	MAXIMUM COVERAGE PERIOD (IN MONTHS)	POSSIBLE QUALIFIED BENEFICIARIES
Death of an employee	36	Spouse, dependents
Divorce or legal separation	36	Spouse, dependents <sup>2</sup>
Employee's Medicare Entitlement*	36	Spouse, dependents
Dependent Child Ceasing Dependent Status	36	Dependents
Hours Reduction <sup>3</sup>	18**	Employee, spouse, dependents
Voluntary Employment Termination	18**	Employee, spouse, dependents
Involuntary Employment Termination	18**	Employee, spouse, dependents
Employer Bankruptcy	Possible lifetime	Retirees

\*Refer to Medicare entitlement

\*\*NYS mandatory 36 months

<sup>1</sup> A loss of coverage can also include a "change in premium arrangement," such as an increase in the employee contribution amount due to a reduction of hours.

<sup>2</sup> Only if coverage is lost.

<sup>3</sup> FMLA leave is not a COBRA qualifying event. COBRA would be offered if the employee failed to return to work at the end of the leave.

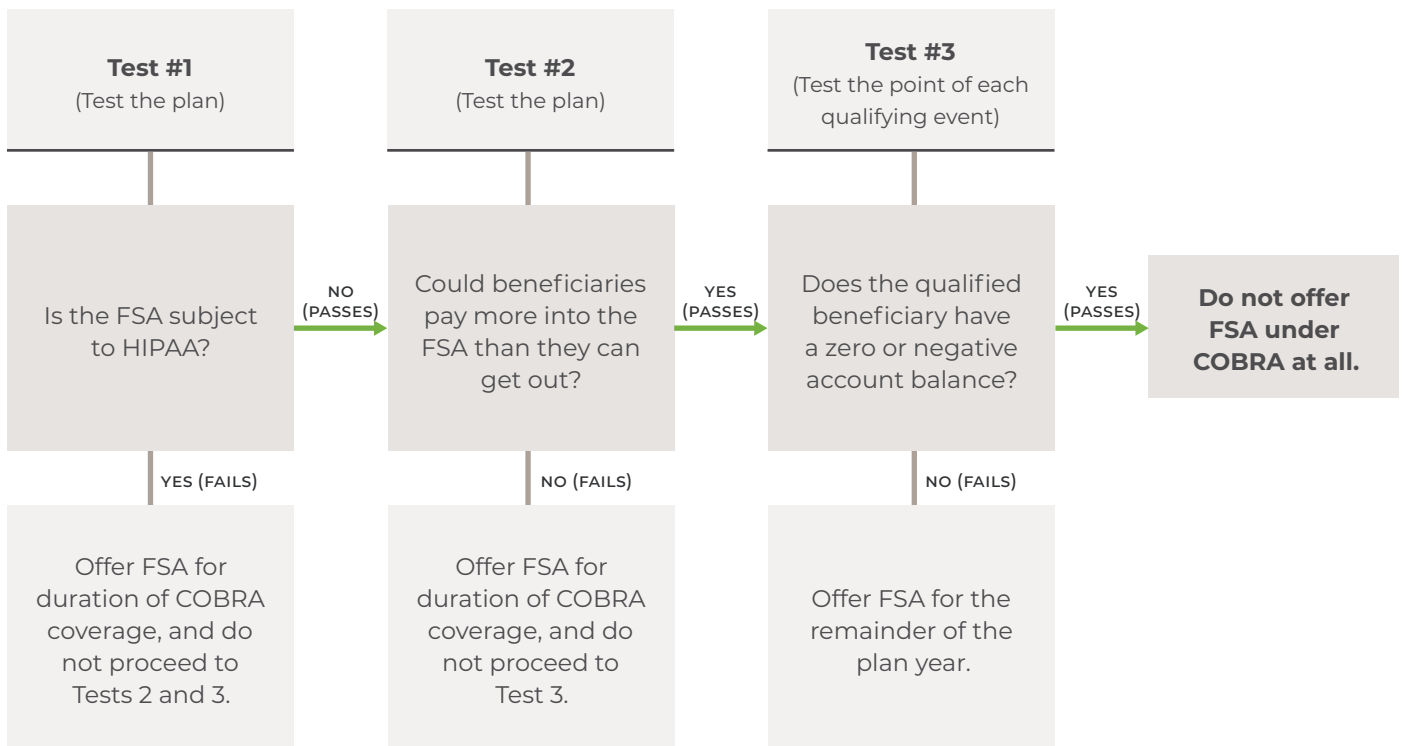
## COBRA Coverage

Coverage is offered under COBRA under the same terms and conditions coverage is offered to “similarly situated non-COBRA beneficiaries” (i.e., if a bundled plan is offered to active employees, COBRA qualified beneficiaries can be required to elect the bundled plan).

OFFER	DO NOT OFFER
<ul style="list-style-type: none"> <li>• Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• EAP (certain instances)</li> <li>• Health FSA (see next page)</li> <li>• HRA</li> <li>• Prescription</li> </ul>	<ul style="list-style-type: none"> <li>• Dependent care FSA</li> <li>• Long-Term Disability</li> <li>• Short-Term Disability</li> <li>• Life Insurance</li> </ul>

Alternative coverage is any coverage offered at the time of a qualifying event that is not COBRA coverage, such as a retiree plan.

## Health FSA Flow Chart



## ELECTION PERIODS AND TIME FRAMES

<p><b>44 Days</b> Notice for ER/PA to Qualified Beneficiary</p>	<p><b>44 Days To Mail Qualifying Event Notice (2004 Final COBRA Regulations)</b> The administrator furnishes each qualified beneficiary a notice — no later than 44 days after the date of the qualifying event occurrence.</p>
<p><b>60 Days</b> COBRA Election Period</p>	<p><b>60-Day Election Period (1999 Final COBRA Regulations)</b> The election period must not end before the date that is 60 days after the later of:</p> <ul style="list-style-type: none"> <li>• The date the qualified beneficiary would lose coverage due to the qualifying event; or</li> <li>• The date the notice provided to the qualified beneficiary of their right to elect COBRA continuation</li> </ul>
<p><b>45 Days</b> Retroactive Premium Payment Period</p>	<p><b>45 Days To Make the Initial Payment (1999 Final COBRA Regulations)</b> A plan cannot require payment for any period of COBRA continuation coverage for a qualified beneficiary earlier than 45-days after the date the election of COBRA continuations coverage is made for that qualified beneficiary</p>
<p><b>30 Days</b> Prospective Premium Payment Period</p>	<p><b>30 Days' Grace on Each Monthly Premium (1999 Final COBRA Regulations)</b> Payment that is made to the plan by the date that is 30 days after the first day of that period. Payment that is made to the plan by a later date is also considered timely payment if either:</p> <ul style="list-style-type: none"> <li>• Under the terms of the plan, covered employees or qualified beneficiaries are allowed until the later date to pay for their coverage for the period; or</li> <li>• Under the terms of an arrangement between the employer or employee organization and an insurance company, health maintenance organization or other entity that provided plan benefits on the employer's or employee organization's behalf, the employer or employee organization is allowed until the later date to pay for coverage of similarly situated non-COBRA beneficiaries for the period.</li> </ul>

## COBRA TERMINATING EVENTS

<p><b>REASON</b></p>	<ul style="list-style-type: none"> <li>• Medicare entitlement<sup>1</sup></li> <li>• Nonpayment</li> <li>• End of all group health plans</li> <li>• Other coverage<sup>2</sup></li> <li>• End of disability (no longer deemed disabled)</li> <li>• Cause<sup>3</sup></li> </ul>
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<sup>1</sup> Any Qualifying beneficiary's (QB's) Medicare entitlement occurring after the date COBRA is elected will terminate all coverage types for that QB. If the QB is the former employee, refer to COBRA extensions.

<sup>2</sup> If a QB first becomes covered after the date of the COBRA election by another group health plan that does not impose any pre-existing condition limitations or exclusions for that QB, then COBRA coverage will terminate.

<sup>3</sup> Coverage can be terminated under the same terms and conditions for which it can be terminated for active employees.

COBRA NOTICE

NAME	PURPOSE	REQUIRED	TIME FRAME
<b>General Notice</b>	Notifies covered employee, spouse and dependent of future rights and responsibilities	Yes	Within 90 days of commencement of coverage
<p><b>Required Elements:</b> Plan name, contact information, description of COBRA continuation coverage, description of qualifying beneficiary (QB), types of qualifying events, employer notification responsibilities, maximum coverage periods, extensions, premium payments, QB responsibilities to notify, keeping address current, referral to SPD and terminating events</p>			
<b>General Notice</b>	Notifies QBs of information relevant to a specific qualifying event	Yes	Within 44 days of the event date (except for QB-reported events)
<p><b>Required Elements:</b> Plan name, contact information, qualifying events, identification by status or name of QB, loss of coverage date, independent election rights, who may elect on another's behalf, procedures for electing, consequences of not electing/waiving, procedures for revoking a waiver, description of continuation coverage, maximum coverage period, terminating events, extensions, QB reports responsibilities, premium amounts, payment due dates, right to pay monthly, maintaining current address, where to send payments, reference to SPD.</p>			
<b>Termination Notice</b>	Notifies QBs that COBRA coverage has terminated prior to the end of the maximum coverage period	Yes	As soon as practical after coverage terminates
<b>Conversion Notice</b>	Notifies QBs of the possibility of individual coverage	Yes	During the last 180 days of continuation coverage
<b>Unavailability Notice</b>	Notifies individuals that COBRA coverage is not available	Yes	Within 44 days of even date, for the QB reported events within 14 days of information
<b>Extension Notice</b>	Notifies QBs that the maximum period has been extended	No	N/A
<b>Expiration Notice</b>	Reminds QBs that COBRA will expire soon	No	N/A

## Extensions

### Disability Extension

This criteria must be met:

- Deemed disabled by the Social Security Administration
- Disability began prior to the end of the first 60 days of continuation coverage
- Disability reported within 60 days of the latter of:
  - Determination letter
  - Qualifying event date
  - Loss of coverage date
  - Date qualifying beneficiary is notified
- Disability reported before the end of the 18-month maximum coverage period.

### Secondary Event

The maximum coverage period can be expanded if a qualifying event that gives rise to an 18-months-maximum coverage period (or 29 months, in cases of disability) is followed, within that 18- or 29-month period, by a second qualifying event that gives rise to a 36-month-maximum coverage period.<sup>1</sup>

<sup>1</sup> For Medicare entitlement, refer to Medicare entitlement.

## Medicare Entitlement

### Qualifying Event

If a covered employee becomes entitled to Medicare before experiencing a qualifying event (termination or hours reduction), the maximum coverage for the qualified beneficiaries (QBs) other than the covered employee ends on the latter of:

- 36 months after the date of the Medicare entitlement, or
- 18 months after the termination or hours reduction.

### Extension

Revenue Ruling 2004-22: On February 13, 2004, the IRS posted Revenue Ruling 2004-22, which reiterates our long-time stance that a covered employee's Medicare entitlement is not a second qualifying event for a QB (spouse or dependent, if any) unless that Medicare entitlement would have resulted in a loss of coverage under the group health plan.

In short, Medicare entitlement of the employee would need to cause a loss of coverage per the terms of the group health plan for the spouse or dependent to receive the additional 18 months of COBRA, giving a total of 36-months from the original qualifying event.

### Terminating Event

COBRA terminates all coverage (for any individual QB) on the date, after the date of election, that the QB first becomes entitled to Medicare.

## TAA

The Trade Adjustment Assistance Act contains two provisions that affect COBRA coverage.

### Subsidy

A COBRA-qualified beneficiary, deemed TAA eligible, received a 65% TAA subsidy (tax credit) for COBRA premiums or a refundable tax credit equal to 65% of the COBRA premiums.

### Second Election Period

TAA-eligible recipients who do not elect COBRA during the 60-day election period that was a direct consequence of the TAA-related loss of coverage may elect continuation coverage during a 60-day period beginning on the first day of the month they are determined to be a TAA-eligible individual, provided such election is made no later than six months after the date of the TAA-related loss of coverage.

### Eligibility

Individuals should inquire with **their state unemployment agencies** for assistance to determine their TAA eligibility.

## About Alera Group

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Alera Group is an independent financial services firm with more than \$1.3 billion in gross revenue, offering comprehensive property and casualty insurance, employee benefits, wealth services and retirement plan solutions to clients nationwide. Working collaboratively across specialties and across the country, Alera Group's team of more than 4,200 colleagues offer unique solutions, personalized services and proactive insights to help ensure each client's business and personal success. For more information, visit [aleragroup.com](https://www.aleragroup.com) and follow us on [LinkedIn](#).

\*STATISTICS ACCURATE AS OF MARCH 31, 2024.

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