

**THE FIVE W's AND ONE H**

COBRA Participants and Open Enrollment

Who is a Consolidated Omnibus Budget Reconciliation Act (COBRA) Participant?

- A COBRA participant is a qualified beneficiary (i.e. an employee, employee's spouse, former spouse or dependent child who was covered by a group health plan on the day before a qualifying event occurred) who is enrolled in continuation coverage on an employer's group health plan.
- For the purposes of open enrollment, COBRA participants are individuals currently enrolled and paying for COBRA, individuals in their 60-day election period and individuals who have elected, but not yet paid for COBRA. Note: Domestic partners, unlike spouses, are not considered qualified beneficiaries under Federal COBRA and therefore do not have independent COBRA rights.

What are the rights of a COBRA participant during open enrollment?

- A COBRA participant must receive the same benefits, choices and services that a similarly situated participant or beneficiary currently receives under the plan during open enrollment to:
 - Add/drop coverage
 - Add/drop dependents
 - Switch from one group health plan to another
 - Switch to another benefit package within the same plan

Where does a COBRA participant learn about their open enrollment coverage options?

- A plan sponsor must mail to each COBRA participant's home address open enrollment materials containing everything a participant will need to make an informed coverage decision and election including:
 - An open enrollment announcement indicating:
 - Coverage effective date
 - Cost (rate sheet) that includes the 2% admin fee (if applicable)
 - Deadline and where to return forms
 - An explanation of consequences for failing to respond to the open enrollment notice
 - Election options/coverage summaries (e.g. SBC) for all group medical, dental and vision plans offered
 - Enrollment/election form
 - Required notices (See: [The Five W's and One H of Required Annual Notices for Health and Welfare Plans](#))
- A plan sponsor may use a COBRA administrator to manage their COBRA participant's open enrollment process, however, a plan sponsor is ultimately responsible to make sure required information is provided.

Why must a plan sponsor (employer) provide open enrollment materials to COBRA participants?

- COBRA participants are entitled to be notified during open enrollment (the same as active employees) when plans are being added or eliminated, if there are carrier changes or rates are changing and the enrollment procedures.
 - Per [Treas. Reg. §54.4980B-5, Q/A-4\(c\)](#), If an employer or employee organization makes an open enrollment period available to similarly situated active employees with respect to whom a qualifying event has not occurred, the same open enrollment period rights must be made available to each qualified beneficiary receiving COBRA continuation coverage. An open enrollment period means a period during which an employee covered under a plan can choose to be covered under another group health plan or under another benefit package within the same plan, or to add or eliminate coverage of family members.
- Failure to comply with COBRA and provide participants with the necessary paperwork and notifications can be costly (e.g. penalties) for an employer and opens the door to legal action, including lawsuits filed by the affected participants.

When a COBRA participant fails to return their open enrollment election forms, does coverage terminate?

- In general, there are only six ways COBRA may terminate before their maximum coverage period ends:
 1. Premiums are not paid in full on a timely basis.
 2. The employer ceases to maintain any group health plan.
 3. COBRA participant begins coverage under another group health plan after electing continuation coverage.
 4. Enrolling in Medicare after electing continuation coverage.
 5. The right to the disability extension is terminated (e.g. SSA determines that the qualified beneficiary is no longer disabled).
 6. COBRA participant engages in fraud or other conduct that would justify terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage.
- If a participant fails to respond or does not return their open enrollment election the cautious approach would be:
 - If the plan(s) the participant is on does not change, then their coverage rolls over into the new plan year and they are billed the new plan year's premiums.
 - If the carrier or plan(s) they are on are changing and they never sent in an election, they are billed for the plans that replaced the coverages they had.
- If they send in payment, they would be enrolled. If they do not, they will term for non-payment as of the renewal date.
- An employer wishing to take a more aggressive approach and terminate benefits if a COBRA participant fails to respond or does not return their open enrollment election, would want to work with legal counsel to ensure they have authority to terminate for this reason.

How can employers find answers to additional questions on COBRA Continuation Coverage?

- The DOL provides the [FAQs on COBRA Continuation Health Coverage for Employers and Advisers](#).



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