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**OLR BACKGROUNDER: COBRA CONTINUATION OF GROUP HEALTH BENEFITS**

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This report provides information about federal and state continuation of group health insurance requirements. It revises and updates OLR Report [2008-R-0682](#) to incorporate PA [10-13](#), which extended the period of continued coverage for certain qualifying events from 18 to 30 months.

**FEDERAL LAW: COBRA**

COBRA, the Consolidated Omnibus Budget Reconciliation Act (PL 99-272, as amended), amends ERISA, the Employee Retirement Income Security Act, to provide continuation of group health coverage that might otherwise be terminated. COBRA applies to employers with 20 or more employees.

Under certain circumstances, COBRA gives certain former employees, retirees, dependent children, and spouses and former spouses the right to temporary continuation of health coverage under the employer's group health plan, so long as the insured pays the required premiums. The premium for COBRA coverage cannot exceed 102% of the plan's group rate for coverage, plus 2% for administrative costs. (Costs may increase if coverage is further extended because of disability.)

***COBRA Qualifying Events***

Continuation coverage is available only when coverage is lost due to certain "qualifying events." Qualifying events for employees are (1)

voluntary or involuntary termination of employment for reasons other than gross misconduct and (2) reduction in the number of hours worked.

For spouses and dependent children, the qualifying events are the:

1. voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct;
2. reduction in the number of hours worked by the covered employee;
3. covered employee's eligibility for Medicare;
4. covered employee's death, divorce, or legal separation; and
5. if a dependent child, loss of dependent child status under the plan.

### ***Period of Coverage under COBRA***

COBRA establishes required periods of coverage for continuation of health benefits. A plan may, however, provide longer periods of coverage beyond those required. COBRA requires coverage to extend for 18 months when the qualifying event is an employment termination or a reduction of hours worked. Other qualifying events, or a second qualifying event during the initial period of coverage, may extend the coverage up to 36 months. Longer periods of coverage may be available for a person with a disability.

COBRA continuation coverage begins on the date that coverage under the group health plan ends due to a qualifying event and ends after the maximum allowed period of coverage expires. However, COBRA coverage may end earlier if:

1. premiums are not paid on a timely basis;
2. the employer ceases to maintain any group health plan;
3. after the COBRA election, coverage is obtained through another group health plan; or
4. after the COBRA election, the insured becomes eligible for Medicare.

### ***COBRA Eligibility***

To be eligible for COBRA coverage (a “qualified beneficiary”), the (1) employee, while working, must have been enrolled in the employer’s health plan and lost coverage due to a qualified event and (2) health plan must continue to be in effect for active employees. COBRA continuation coverage will not be available if the employer discontinues all of its health plans. In that case, employees have to seek other coverage.

### ***COBRA Benefits and Plan Changes***

Qualified beneficiaries must be offered coverage identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage (e.g., active employees). This is generally the same coverage that the qualified beneficiary had immediately before qualifying for continuation coverage.

A change in the active employees’ plan benefits also applies to qualified beneficiaries. Qualified beneficiaries must be allowed to make the same choices given to non-COBRA plan beneficiaries (e.g., during the plan’s open enrollment). Thus, if an employer replaces its group health care plan with another, then qualified beneficiaries receiving COBRA coverage must be given the same opportunity to select the new plan as active employees. If a qualified beneficiary does not elect the new plan, his or her coverage ceases on the last day of the plan year.

### ***COBRA Notices***

The law requires plan administrators (typically employers) to give employees and qualified beneficiaries notice of COBRA rights and enrollment information at specific times, as shown in Table 1. In 2004, the U.S. Department of Labor (DOL) issued final regulations that include two notice requirements not specified in the COBRA statute—notice of unavailability of COBRA and notice of early termination of COBRA coverage.

The “notice of early termination of continuation coverage” requirement is triggered when a plan cancels a beneficiary’s coverage before benefits are exhausted as otherwise allowed under COBRA, such as for nonpayment or when the employer ceases to offer any health care coverage to its active employees. The notice must include the reason the coverage is ending early, the coverage termination date, and any conversion rights (e.g., to an individual policy) the beneficiary has under the plan. The regulations specify that the notice must be provided “as soon as practicable” following the administrator’s determination that coverage is terminating.

**Table 1: Required COBRA Notices**

<b>Notice</b>	<b>Information</b>	<b>To Whom</b>	<b>When</b>
Initial COBRA notice	Notice of rights to purchase temporary extension of group health coverage when coverage is lost due to a qualifying event.	Covered employees and covered spouses.	Within 90 days of when group health plan coverage begins.
COBRA election notice	Notice to qualified beneficiaries of their right to elect COBRA coverage upon the occurrence of a qualifying event.	Covered employees, covered spouses, and dependent children who are qualified beneficiaries.	Within 14 days after the employer or qualified beneficiary notifies the administrator of the qualifying event.
Notice of unavailability of COBRA	Notice that an individual is not entitled to COBRA	Individuals who provide notice to the administrator of a qualifying event whom the administrator determines are not eligible for COBRA coverage.	Within 14 days after the individual notifies the administrator of the event.
Notice of early termination of COBRA coverage	Notice that a qualified beneficiary's COBRA coverage will terminate earlier than the maximum period of coverage.	Qualified beneficiaries whose COBRA coverage will terminate earlier than the maximum period of coverage.	As soon as practicable following the administrator's determination that the coverage will terminate.

Source: U.S. Department of Labor, Employee Benefits Security Administration

***COBRA Enforcement***

Several federal agencies administer and enforce COBRA. The DOL and the Treasury Department have jurisdiction over private-sector health plans. The Department of Health and Human Services has jurisdiction over public-sector health plans.

The Internal Revenue Service has issued regulations on COBRA provisions relating to eligibility, coverage, and premiums. DOL and the Treasury Department share jurisdiction for enforcing these provisions.

***Penalties***

An employer or plan administrator that does not comply with COBRA is subject to the following penalties:

1. an IRS excise tax of \$100 per day per violation (\$200 a day if the violation affects more than one beneficiary);
2. ERISA penalties of \$110 per day, per qualified beneficiary, per violation;
3. claim costs the qualified beneficiary incurred; and

4. damages and attorney fees.

### ***Other Coverage Options***

When COBRA coverage is unavailable or exhausted, a person may have other coverage options, including a spouse's group health plan, an individual policy, or a government program.

***Spouse's Group Health Plan.*** An employee losing coverage may have a right to special enrollment in a spouse's group health plan. HIPAA, the Health Insurance Portability and Accountability Act (PL 104-191), requires a group health plan to allow special enrollment for certain individuals to enroll in the plan without having to wait until the plan's next regular open enrollment period. A special enrollment opportunity occurs if a person (1) with other health insurance loses that coverage or (2) becomes a new dependent (e.g., through marriage, birth, or adoption). However, the person must request special enrollment within 30 days of losing other coverage or becoming a new dependent.

***Individual Policy.*** An employee losing coverage may convert from the employer's group health plan to an individual policy. HIPAA guarantees eligible individuals access to individual policies. Eligible individuals are those who:

1. have had coverage for at least 18 months without a significant break in coverage where the most recent period of coverage was under a group health plan;
2. did not have their group coverage terminated because of fraud or nonpayment of premiums; and
3. are ineligible for COBRA continuation coverage or, if offered such coverage (or continuation coverage under a similar state program), have both elected and exhausted their continuation coverage.

***Government Program.*** An employee losing coverage may qualify for health coverage through state or federal government programs. These include:

1. Medicaid (for low-income individuals and individuals with special needs);
2. a state children's insurance program (e.g., Connecticut's HUSKY plan);

3. a state high-risk pool (for individuals denied insurance for health reasons, e.g., Connecticut's Health Reinsurance Association),
4. the state Charter Oak Health Plan; and
5. Medicare (for people age 65 and over, and for certain people who are disabled or have end-stage renal disease).

## **STATE LAW: CONTINUATION OF COVERAGE**

Connecticut law requires each group health insurance policy, regardless of the number of insureds, to provide continuation and conversion benefits (CGS §§ [38a-538](#), [38a-546](#), and [38a-554\(b\) & \(d\)](#)).

### ***Continuation of Coverage***

State law requires each group health insurance policy to give individuals the option to continue coverage under certain circumstances until they are eligible for other group insurance (CGS § [38a-554\(b\)](#)). Continuation of coverage is available to an employee and his or her covered dependents if the employee is laid-off, is given reduced work hours, takes a leave of absence, or terminates employment, for other than gross misconduct. The employee's spouse and dependent children can continue coverage under a group health plan if the employee dies; there is a divorce, court ordered annulment, or legal separation; or the child loses dependent status.

Except as otherwise specified in state law, continuation coverage extends for the periods of coverage set forth in COBRA. This means that coverage will continue for 18 or 36 months, depending on the qualifying event, or longer if the person has a disability. However, under PA [10-13](#), coverage will continue for 30 months (instead of 18 months) after a layoff, reduction of hours, leave of absence, or employment termination. And an employee and his or her covered dependents also are entitled to continue coverage until midnight of the day preceding the employee's eligibility for Medicare if the employee's reduced hours, leave of absence, or employment termination results from his or her eligibility for Social Security income.

An individual may be required to pay the premium, up to 102% of the group rate, for the continued coverage.

### ***Continuation after Health Plan Termination***

State law provides limited continuation coverage for people with disabilities after a group health plan terminates (CGS § [38a-554\(b\)\(4\)](#)). Regardless of a person's eligibility for other group insurance, when a group health plan terminates, coverage for covered individuals who were totally disabled on the date the plan terminated continues for 12 calendar months without payment of premium, provided a claim for coverage is submitted within one year of the termination. Coverage continues only for claims related to the disability.

If a person is not totally disabled on the date the plan terminates, state law does not require coverage continuation.

### ***Conversion to Individual Coverage***

State law requires each group health insurance policy to give Connecticut residents the right to convert to an individual policy immediately upon termination of coverage under the group plan (CGS § [38a-554\(d\)](#)). The terms and benefits offered under the conversion plan must be at least equal to those in an individual comprehensive health care plan, as described in CGS §§ [38a-553](#) and [38a-555](#).

Plan documents for a group health insurance policy explain how a person can convert to an individual policy. The law does not require employers or insurers to contact people losing coverage to offer the individual conversion plan. Thus, it is up to the individual to request conversion.

In Connecticut, most plans offer conversion through the Health Reinsurance Association (HRA), the state's high-risk pool. Information about HRA and applications for coverage can be obtained by calling the high-risk pool at 1-800-842-0004 or visiting the HRA website at <http://www.hract.org/hra/index.htm>.

### **SOURCES OF INFORMATION FOR INDIVIDUALS**

People with questions about continuation coverage and conversion privileges should consult their plan documents and human resources department. They may also contact the Connecticut Insurance Department's Consumer Affairs Division at 1-800-203-3447.

More information on COBRA is available at <http://www.dol.gov/dol/topic/health-plans/cobra.htm> and <http://www.dol.gov/ebsa/pdf/cobraemployer.pdf>.

## **RELATED OLR REPORTS**

For related information, see the following OLR Reports:

- [2004-R-0004](#), Continuation of Coverage for Individuals Age 62 and Older
- [2004-R-0020](#), Coverage Continuation Following Liquidation
- [2004-R-0646](#), COBRA Coverage after Sale of Company
- [2007-R-0528](#), Notification of Group Health Care Plan Change

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