

Continuation of Coverage Under the Federal COBRA Continuation of Coverage Law

The Consolidated Omnibus Budget Reconciliation Act (Public Law 99-272, Title XXII), also known as COBRA, requires that most employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health insurance at group rates in certain instances where coverage would otherwise end.

Since the administration of COBRA is an employer responsibility and NYSHIP does not know the circumstances surrounding termination of coverage for Participating Agency employees, NYSHIP does not offer detailed technical assistance to agencies on how to administer this federally mandated program. (In order to administer COBRA for State employees and their dependents, the Employee Benefits Division relies on the Commerce Clearing House *COBRA Guide*. Your agency may purchase the *COBRA Guide* or a similar publication to guide your administration. In addition, your agency should consult with a legal adviser to be certain your agency's COBRA administration is in conformance with the law.) **NYSHIP does require, however, that Participating Agencies participating in NYSHIP adopt a policy of "maximum adherence" to COBRA law, except for the exceptions below.** That is, employers must not offer more than the minimum coverage mandated by COBRA law, and must strictly adhere to the deadlines required by COBRA law. As an example, in no instance should COBRA coverage be extended beyond 18 months for employees (29 months if entitled to a disability extension) or 36 months for dependents experiencing events entitling them to 36 months. Enrollees not meeting mandated deadlines for notification of events, payments or COBRA elections should not be granted exceptions, unless they can prove a disability made it impossible to meet deadlines. In short, whatever the law mandates is what will be provided, no more and no less. Lastly, agencies may not pay any part of the COBRA premium for COBRA enrollees, although agencies may waive the 2% administrative charge if they wish.

These exceptions to maximum adherence are permitted:

- While COBRA allows employers to deny coverage when a person is terminated for "gross misconduct," the Participating Agency may allow COBRA in cases of termination for "gross misconduct" because the person is entitled to similar coverage under NYS Continuation of Coverage law, even if the Participating Agency denies COBRA. A Participating Agency may adopt a policy with a clear definition of "gross misconduct."
- COBRA allows the Participating Agency to deny COBRA coverage to persons who acquire other coverage after electing COBRA. However, due to the difficulty of determining whether the other coverage is equivalent to the NYSHIP coverage lost, the Participating Agency may continue COBRA when a person acquires coverage other than Medicare after COBRA election. Whenever a person becomes entitled to Medicare benefits after COBRA election, COBRA **must** be cancelled for that person.
- Participating Agencies must offer COBRA to legally separated spouses who have been removed from NYSHIP coverage prior to a divorce as such coverage would be available under the NYS Continuation of Coverage law. In these cases, the date of

the qualifying event is the date of the legal separation, not the date of the divorce which follows.

- Agencies that have opted to provide domestic partnership benefits to active employees may offer COBRA to domestic partners even though COBRA does not consider domestic partners eligible dependents.

The following pages instruct you on how to begin or terminate COBRA coverage:

COBRA Operations

1. Effective Date

The date that coverage is lost due to a qualifying event is the date of first eligibility.

2. Qualifying Events

Under the COBRA law the term “qualifying event” means, with respect to any covered enrollee, any of the following events, which, but for the availability of COBRA coverage, would result in the loss of coverage for a qualified beneficiary.

- a. The death of a covered employee (if enrollee had under 10 years of service).
- b. The termination (other than by reason of such employee’s gross misconduct) or reduction of hours, of the covered employee’s employment.
- c. The divorce or legal separation of the covered employee from the employee’s spouse.
- d. The covered employee becoming entitled to benefits under Medicare.
- e. A dependent child ceasing to be an eligible dependent under the requirements of the plan.

Note that if a loss of coverage does not occur in the above situations, a qualifying event has not occurred. A qualifying event must occur before COBRA coverage can be provided.

3. COBRA Enrollment Process

The Participating Agency must provide a COBRA election notice to an enrollee entitled to COBRA within the timeline mandated by law. A qualified employee or dependent who wishes to enroll in COBRA continuation of coverage must notify the Participating Agency of the decision to enroll within the time frame provided by law. If the election is not received within the time limit, NYSHIP rules restrict the employee or dependent from COBRA coverage and the Participating Agency may not enroll the individual.

4. COBRA Premiums

- a. The law permits employers to charge COBRA enrollees up to 102% of the premium cost. A Participating Agency will be billed at 100% of the “gross” premium rate for COBRA enrollees. Unlike the “net” premium, the gross premium is not reduced by any dividend or interest. Agencies are not required to charge the enrollee the 2% administrative charge.

In the case of an employee determined to be **disabled** under the Social Security Act, the charge is 150% of the premium cost during the 19th through the 29th month of COBRA coverage. A Participating Agency will be billed at 148% of the gross premium rate for Social Security disabled enrollees during the 19th through the 29th month of COBRA coverage. Agencies are not required to charge the enrollee the 2% administrative charge.

- b. Upon receipt of an application for enrollment in COBRA, calculate the amount due to bring the COBRA enrollee’s coverage up to date from the date coverage ended under the employer-sponsored plan and bill for the amount. The enrollee has 45 days from the date coverage was elected to pay this retroactive COBRA premium adjustment. The enrollee’s subsequent payments may be submitted on a monthly basis or he or she may make larger payments.

5. Period of Coverage

- a. Maximum Periods of Coverage

The maximum periods of coverage available under the COBRA continuation of coverage are as follows:

- 1) Except for circumstances described under (a) and (b) below, an employee whose employment is terminated or whose hours are reduced may have COBRA coverage for up to 18 months (Individual or Family coverage).

- (a) When such a person is determined under the Social Security Act to have been disabled at the time of termination of employment or reduction of hours, that person is entitled to a maximum period of 29 months of COBRA coverage. If an enrollee is disabled under Social Security at the time of COBRA election, he must notify the Participating Agency within the first 60 days of COBRA coverage in order to qualify for the 11-month extension for the disabled. If the enrollee becomes disabled under Social Security during COBRA continuation, he must notify the Participating Agency within 60 days of the date of the notice of disability and prior to the end of the 18-month COBRA continuation period in order to qualify for the 11-month extension period.

Prior to the expiration of the enrollee’s initial 18 months of COBRA coverage, notify the Employee Benefits Division of the

person's entitlement to extend coverage. The enrollment record will be changed to permit up to 29 months of coverage for the disabled enrollee and others covered under his enrollment.

- (b) If a person becomes entitled to Medicare benefits before the expiration of the 18 months (and thus ineligible for COBRA coverage), any dependents who are qualified are entitled to COBRA continuation for a total of 18 months from the date the dependents were initially covered in COBRA through the employee.

Note: A qualified beneficiary is one who was entitled to COBRA continuation as a result of the first qualifying event. "Entitled to Medicare benefits" or "entitled to receive Medicare benefits" means the individual has enrolled in Medicare and claims submitted to Medicare are paid by Medicare. Simple eligibility for Medicare does not disqualify an individual from COBRA eligibility; however, if a Medicare eligible individual does not enroll in Medicare, NYSHIP benefits are reduced by what Medicare would have paid. All persons eligible for COBRA **and** eligible to enroll in Medicare are eligible for the standard Medicare Part B reimbursement because Medicare is primary to COBRA coverage.

- 2) In the case of any Qualifying Event other than that described in 1) above, the covered dependent is entitled to a maximum period of 36 months of COBRA coverage.

b. Coverage Under Another Group Plan

Coverage under COBRA may be ended on the last day of the month during which the COBRA enrollee or dependent becomes covered under any other group plan with the exception below.

Exception: If the other group plan contains any exclusion or limitation with respect to any pre-existing condition of such beneficiary, the person may continue under COBRA coverage up to the maximum period established under COBRA law (see a. above).

c. Non-payment of Premiums

If a COBRA enrollee fails to make an initial or monthly payment on time, the Participating Agency must allow an additional 30-day grace period. After the grace period, coverage must be cancelled for non-payment of premiums. Coverage ends on the last day of the month for which premiums have been paid. Once coverage has been cancelled, it cannot be reactivated again on COBRA status. A notice of cancellation should be sent to the enrollee indicating the date coverage ends.

6. Changes During the COBRA Continuation of Coverage Period

Coverage and option changes permitted under an employer's basic health plan may also be made by a person who is covered under the COBRA continuation of coverage.

7. Termination of Coverage

a. Maximum Period of Coverage Ends

- 1) Except in the case of a COBRA enrollee becoming 65 years of age (See 2) below), when the maximum period of COBRA continuation of coverage ends the Health Insurance System will automatically generate a transaction to terminate the COBRA continuation of coverage enrollment record. No agency action is required.
- 2) COBRA coverage ends for a person who becomes 65 and entitled to receive Medicare benefits on the last day of the month preceding the month in which the birthday occurs.

Note: There is one exception to 2) above. If a person who becomes eligible for Medicare but does not draw a Social Security check and does not enroll in Medicare, that person may continue COBRA continuation of coverage until the maximum period of coverage ends; however, NYSHIP benefits are reduced by what Medicare would have reimbursed.

All persons with COBRA coverage who are eligible to enroll in Medicare must be reimbursed for the cost of the Medicare Part B premium since Medicare is primary to COBRA coverage.

b. Coverage Under Another Group Plan

Agencies are not required to terminate COBRA coverage when an enrollee becomes eligible for health insurance coverage other than Medicare.

Note that a COBRA enrollee who is covered under another group plan may be entitled to continue the COBRA plan coverage due to the other plan's exclusion or limitation with respect to any pre-existing condition of such beneficiary. (See "Period of Coverage") In this case, coverage may continue up to the maximum period permitted under COBRA.

- c. When a COBRA enrollee's coverage is terminated due to the maximum period of coverage ending or the individual is covered under another group plan, that individual is entitled to obtain a conversion contract. When a COBRA enrollee's coverage is cancelled for non-payment of premiums, that individual is not entitled to a conversion contract.