



COBRA Election Notice and Form

A Lexis Practice Advisor® Practice Note by
Gabriel S. Marinaro, Katten Muchin Rosenman LLP



Gabriel S. Marinaro

FORM SUMMARY

This form is an election notice for the continuation of COBRA coverage for group health plans. It is given as part of COBRA administration procedures in compliance with notification obligations under federal law. This form includes practical guidance and drafting notes.

Group health plans are required to provide election notices to qualified beneficiaries within 14 days after the plan administrator becomes aware of a COBRA qualifying event. This form is derived from the model election form notice published by the Department of Labor (DOL). The DOL model notice in its original form is available (along with a Spanish language version) at the [DOL website](#).

This form is intended to be used along with the following forms: [COBRA Rights General Notice](#) and [COBRA Qualifying Event Notice](#). For a general practice note on COBRA, see [COBRA Compliance and Enforcement](#). See also the following COBRA compliance flowcharts: [COBRA Notice Flowchart \(Employee Loss of Coverage\)](#); [COBRA Notice Flowchart \(Spouse or Child Loss of Coverage\)](#); [COBRA Second Qualifying Event Flowchart](#); and [COBRA Disability Extension Flowchart](#).

IMPORTANT INFORMATION: COBRA CONTINUATION COVERAGE AND OTHER HEALTH COVERAGE ALTERNATIVES

[Date]

Dear [qualified beneficiary(ies), identified by name or status]:

This notice has important information about your right to continue your health care coverage in the [name of group health plan] (the Plan), as well as other health coverage options that may be available to you, including coverage through the Health Insurance Marketplace at www.HealthCare.gov or call 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. Please read the information in this notice very carefully before you make your decision. If you choose to elect COBRA continuation coverage, you should use the election form provided later in this notice.

Drafting Note to First Paragraph of Notice

If the person is eligible for continuation coverage under more than one group health plan (e.g., a medical plan and a dental plan), list each applicable plan.

WHY AM I GETTING THIS NOTICE?

You're getting this notice because your coverage under the Plan will end on [insert date] due to (check appropriate box):

- | | |
|--|---|
| <input type="checkbox"/> End of employment | <input type="checkbox"/> Reduction in hours of employment |
| <input type="checkbox"/> Death of employee | <input type="checkbox"/> Divorce or legal separation |
| <input type="checkbox"/> Entitlement to Medicare | <input type="checkbox"/> Loss of dependent child status |

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage through COBRA continuation coverage when there's a "qualifying event" that would result in a loss of coverage under an employer's plan.

WHAT'S COBRA CONTINUATION COVERAGE?

COBRA continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries who aren't getting continuation coverage. Each "qualified beneficiary" (described below) who elects COBRA continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan.

WHO ARE THE QUALIFIED BENEFICIARIES?

Each person ("qualified beneficiary") in the category(ies) checked below can elect COBRA continuation coverage:

Employee or former employee

Spouse or former spouse

Dependent child(ren) covered under the Plan on the day before the event that caused the loss of coverage

Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan

Drafting Note to First Paragraph in “Who are the qualified beneficiaries”

Check all qualified beneficiaries that may elect continuation coverage as a result of the qualifying event for which the notice is being prepared.

ARE THERE OTHER COVERAGE OPTIONS BESIDES COBRA CONTINUATION COVERAGE?

Yes. Instead of enrolling in COBRA continuation coverage, there may be other more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse’s plan) through what is called a “special enrollment period.” Some of these options may cost less than COBRA continuation coverage.

You should compare your other coverage options with COBRA continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage you may pay more out of pocket than you would under COBRA because the new coverage may impose a new deductible.

When you lose job-based health coverage, it’s important that you choose carefully between COBRA continuation coverage and other coverage options, because once you’ve made your choice, it can be difficult or impossible to switch to another coverage option.

IF I ELECT COBRA CONTINUATION COVERAGE, WHEN WILL MY COVERAGE BEGIN AND HOW LONG WILL THE COVERAGE LAST?

If elected, COBRA continuation coverage will begin on *[start date]* and can last until *[end date]*.

Optional Clauses

You may elect any of the following options for COBRA continuation coverage: *[available coverage options]*.

Continuation coverage may end before the date noted above in certain circumstances, like failure to pay premiums, fraud, the individual becomes covered under another group health plan, or the individual becomes entitled to Medicare.

Optional Clauses

If a qualified beneficiary becomes covered under another group health plan or becomes entitled to Medicare after electing COBRA coverage, complete the COBRA Event Notice attached to your General Notice of COBRA Continuation Rights (also available at [website] or by contacting the COBRA Administrator identified later in this notice under “For More Information”). The form must be mailed to the COBRA Administrator no later than 60 days after the date the other coverage begins.

If COBRA coverage ends early, the COBRA administrator will send you notice of the termination of COBRA coverage as soon as practicable after the decision is made. The notice of COBRA termination will describe the date the coverage will terminate, the reason for the termination, and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative or individual coverage.

CAN I EXTEND THE LENGTH OF COBRA CONTINUATION COVERAGE?

If you elect continuation coverage, you may be able to extend the length of continuation coverage if a qualified beneficiary is disabled before the 60th day of continuation coverage, or if a “second qualifying event” occurs during continuation coverage. A second qualifying event is when a qualified beneficiary has COBRA continuation coverage and one of the following events occurs: death of the covered employee, divorce or legal separation of the covered employee, the covered employee’s becoming entitled to Medicare (in certain circumstances), or a loss of dependent child status under the plan. The second event can be a second qualifying event only if it would have caused you to lose coverage under the Plan in the absence of the first qualifying event.

You must notify the COBRA Administrator identified later in this notice under “For More Information” of a disability or a second qualifying event within a certain time period to extend the period of continuation coverage. If you don’t provide notice of a disability or second qualifying event within the required time period, it will affect your right to extend the period of continuation coverage.

Optional Clauses

Use the COBRA Event Notice attached to your General Notice of COBRA Continuation Rights (also available at [website] or by contacting the COBRA Administrator) to notify the COBRA Administrator of a disability determination or qualifying event.

For more information about extending the length of COBRA continuation coverage, see the Plan’s Summary Plan Description or the General Notice of COBRA Continuation Coverage Rights (available at [website] or by contacting the COBRA Administrator). You may also visit the Department of Labor’s Employee Benefits Security Administration website at <http://www.dol.gov/ebsa/publications/cobraemployee.html> for general information on this and other COBRA topics.

HOW MUCH DOES COBRA CONTINUATION COVERAGE COST?

COBRA continuation coverage will cost: *[insert amount each qualified beneficiary will be required to pay per month for each option of coverage and any other permitted coverage periods]*

Other coverage options may cost less. If you choose to elect continuation coverage, you don't have to send any payment with the Election Form. Additional information about payment will be provided to you after the Election Form is received by the Plan. Important information about paying your premium can be found at the end of this notice.

COBRA premiums are subject to future changes. Your premiums may be increased to amounts higher than those given above. In addition, the Plan may charge a higher premium for a period of extended coverage provided to a qualified beneficiary as a result of their becoming disabled.

You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. You can learn more about the Marketplace below.

WHAT IS THE HEALTH INSURANCE MARKETPLACE?

The Marketplace offers “one-stop shopping” to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you'll also learn if you qualify for free or low-cost coverage from [Medicaid](#) or the [Children's Health Insurance Program \(CHIP\)](#). You can access the Marketplace for your state at www.HealthCare.gov.

Coverage through the Health Insurance Marketplace may cost less than COBRA continuation coverage. Being offered COBRA continuation coverage won't limit your eligibility for coverage or for a tax credit through the Marketplace.

WHEN CAN I ENROLL IN MARKETPLACE COVERAGE?

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based health coverage is a “special enrollment” event. **After 60 days your special enrollment period will end and you may not be able to enroll, so you should take action right away.** In addition, during what is called an “open enrollment” period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

IF I SIGN UP FOR COBRA CONTINUATION COVERAGE, CAN I SWITCH TO COVERAGE IN THE MARKETPLACE? WHAT ABOUT IF I CHOOSE MARKETPLACE COVERAGE AND WANT TO SWITCH BACK TO COBRA CONTINUATION COVERAGE?

If you sign up for COBRA continuation coverage, you can switch to a Marketplace plan during a Marketplace open enrollment period. You can also end your COBRA continuation coverage early and switch to a Marketplace plan if you have another qualifying event such as marriage or birth of a child through something called a “special enrollment period.” But be careful, though—if you terminate your COBRA continuation coverage early without another qualifying event, you'll have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once you've exhausted your COBRA continuation coverage and the coverage expires, you'll be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended.

If you sign up for Marketplace coverage instead of COBRA continuation coverage, you cannot switch to COBRA continuation coverage under any circumstances.

CAN I ENROLL IN ANOTHER GROUP HEALTH PLAN?

You may be eligible to enroll in coverage under another group health plan (like a spouse's plan) if you request enrollment within 30 days of the loss of coverage.

If you or your dependent chooses to elect COBRA continuation coverage instead of enrolling in another group health plan for which you're eligible, you'll have another opportunity to enroll in the other group health plan within 30 days of losing your COBRA continuation coverage.

WHAT FACTORS SHOULD I CONSIDER WHEN CHOOSING COVERAGE OPTIONS?

When considering your options for health coverage, you may want to think about:

- **Premiums.** Your previous plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive.
- **Provider networks.** If you're currently getting care or treatment for a condition, a change in your health coverage may affect your access to a particular health care provider. You may want to check to see if your current health care providers participate in a network as you consider options for health coverage.
- **Drug formularies.** If you're currently taking medication, a change in your health coverage may affect your costs for medication – and in some cases, your medication may not be covered by another plan. You may want to check to see if your current medications are listed in drug formularies for other health coverage.
- **Severance payments.** If you lost your job and got a severance package from your former employer, your former employer may have offered to pay some or all of your COBRA payments for a period of time. In this scenario, you may want to contact the Department of Labor at 1-866-444-3272 to discuss your options.
- **Service areas.** Some plans limit their benefits to specific service or coverage areas – so if you move to another area of the country, you may not be able to use your benefits. You may want to see if your plan has a service or coverage area, or other similar limitations.
- **Other cost sharing.** In addition to premiums or contributions for health coverage, you probably pay copayments, deductibles, coinsurance, or other amounts as you use your benefits. You may want to check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums but a much higher deductible and higher copayments.

FOR MORE INFORMATION

This notice doesn't fully describe continuation coverage or other rights under the Plan. More information about continuation coverage and your rights under the Plan is available in your summary plan description or from the Plan Administrator.

If you have questions about the information in this notice, your rights to coverage, or if you want a copy of your summary plan description, contact *[COBRA administrator name, number, and address]*.

For more information about your rights under the Employee Retirement Income Security Act (ERISA), including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, visit the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) website at www.dhs.gov.

dol.gov/ebsa or call their toll-free number at 1-866-444-3272. For more information about health insurance options available through the Health Insurance Marketplace, and to locate an assister in your area who you can talk to about the different options, visit www.HealthCare.gov.

KEEP YOUR PLAN INFORMED OF ADDRESS CHANGES

To protect your and your family's rights, keep the Plan Administrator informed of any changes in your address and the addresses of family members. You should also keep a copy of any notices you send to the Plan Administrator.

COBRA CONTINUATION COVERAGE ELECTION FORM

Instructions: To elect COBRA continuation coverage, complete this Election Form and return it to us. Under federal law, you have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan.

Send completed Election Form to: *[name and address]*

This Election Form must be completed and returned by mail, post-marked no later than *[date]*. [If applicable, describe any other acceptable means of submission and due date].

If you don't submit a completed Election Form by the due date shown above, you'll lose your right to elect COBRA continuation coverage. If you reject COBRA continuation coverage before the due date, you may change your mind as long as you submit a completed Election Form before the due date. However, if you change your mind after first rejecting COBRA continuation coverage, your COBRA continuation coverage will begin on the date you submit the completed Election Form.

Read the important information about your rights included in the pages accompanying this Election Form.

I. (We) elect COBRA continuation coverage in the *[name of plan(s)]* as noted below:

Name of Qualifying Beneficiary	Date of Birth	Relationship to Employee	Last 4 digits of SSN	Coverage Option(s) Elected
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Signature

Date

Print Name



Relationship to individual(s) listed above

Print address

Telephone Number

IMPORTANT INFORMATION ABOUT PAYMENT

First payment for continuation coverage

You must make your first payment for continuation coverage no later than 45 days after the date of your election (this is the date the Election Notice is postmarked). If you don't make your first payment in full no later than 45 days after the date of your election, you'll lose all continuation coverage rights under the Plan. You're responsible for making sure that the amount of your first payment is correct. You may contact *[COBRA administrator name and contact information]* to confirm the correct amount of your first payment.

Payments for continuation coverage

After you make your first payment for continuation coverage, you'll have to make periodic payments for each coverage period that follows. The amount due for each coverage period for each qualified beneficiary is shown in this COBRA Continuation Coverage Election Notice. The periodic payments can be made on a monthly basis. Under the Plan, each of these periodic payments for continuation coverage is due *[monthly payment due dates]* for that coverage period.

Optional Clauses

You may instead make payments for continuation coverage for the following coverage periods, due on the following dates: *[alternate payment schedule]*.

If you make a periodic payment on or before the first day of the coverage period to which it applies, your coverage under the Plan will continue for that coverage period without any break. The Plan *[insert EITHER "will" OR "will not"]* send periodic notices of payments due for these coverage periods.

Drafting Note to Last Paragraph in the "Payments for continuation coverage" Section

Indicate whether or not the plan will send notices of payments due.

Grace periods for payments

Although periodic payments are due on the dates shown above, you'll be given a grace period of 30 days after the first day of the coverage period to make each periodic payment. You'll get continuation coverage for each coverage period as long as payment for that coverage period is made before the end of the grace period.

Drafting Note to First Paragraph in the "Grace periods for payments" Section

If the plan provides for a grace period longer than 30 days, modify this paragraph accordingly.

Optional Clauses

If you pay a periodic payment later than the first day of the coverage period to which it applies, but before the end of the grace period for the coverage period, your coverage will be suspended as of the first day of the coverage period and then retroactively reinstated (going back to the first day of the coverage period) when the periodic payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted after your coverage is reinstated.

If you don't make a periodic payment before the end of the grace period for that coverage period, you'll lose all rights to continuation coverage under the Plan.

Your first payment and all periodic payments for continuation coverage should be sent to: *[payment recipient name and address]*

Drafting Note to Election Form

Each qualified beneficiary has a separate right to elect COBRA coverage. For example, the covered employee's spouse may elect COBRA coverage even if the covered employee does not. COBRA coverage can be elected for one or all dependent children and may be elected by the parent on behalf of the dependent children. You can delete the "Coverage Option(s) Elected" column in the table for providing COBRA election information if only one form of coverage is available. Add more rows to the table if there are more than three potential qualified beneficiaries.

Gabriel S. Marinaro

Special Counsel, Katten Muchin Rosenman LLP

Gabriel Marinaro serves as special counsel in the Employee Benefits and Executive Compensation group. His practice focuses on all aspects of employee benefits and executive compensation. He regularly counsels publicly traded and privately held companies, tax-exempt organizations, and governmental entities on a variety of employee benefits and executive compensation matters. Gabe regularly advises both employers and executives on a wide range of executive compensation matters, including drafting employment agreements, equity compensation arrangements, severance agreements and bonus plans. Gabe provides guidance on nonqualified deferred compensation plans both for for-profit companies and tax-exempt clients. Gabe regularly drafts nonqualified deferred compensation arrangements, including supplemental executive retirement plans, and change in control agreements. Additionally, Gabe advises employers and executives on issues under Code Sections 409A, 457(f), 457A, 162(m), 280G and 83 regarding compensation arrangements for executives.

Gabe assists both publicly traded and privately held companies with equity compensation matters, including drafting equity incentive plans, securities filings, award agreements, and other documentation surrounding the implementation of an equity incentive plan and the underlying awards. Gabe also has drafted and advised on profits interests plans and unit appreciation rights plans for limited liability companies.

Learn more

[LEXISNEXIS.COM/PRACTICE-ADVISOR](https://www.lexisnexis.com/practice-advisor)

This document from Lexis Practice Advisor®, a comprehensive practical guidance resource providing insight from leading practitioners, is reproduced with the permission of LexisNexis®. Lexis Practice Advisor includes coverage of the topics critical to practicing attorneys. For more information or to sign up for a free trial, visit [lexisnexis.com/practice-advisor](https://www.lexisnexis.com/practice-advisor). Reproduction of this material, in any form, is specifically prohibited without written consent from LexisNexis.

