

**Health Care Law
Fall 2005
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HIPAA/COBRA GUIDE

COBRA

1. **Applicability.** COBRA applies to group health plans offered by public and private employers, EXCEPT
 - a. Churches;
 - b. Governmental entities of the United States;
 - c. State and local government agencies not receiving funds from the Public Health Service Act; and
 - d. Employers whose total number of employees is fewer than 20 on a “typical business day” in the prior calendar year.
2. **Continuation Coverage.** Under certain circumstances, a group health plan must provide former participants and qualified beneficiaries (typically, spouses and dependent children) at least a 60-day opportunity to elect and pay for extended health insurance coverage for a certain period of time upon the occurrence of a “qualifying event.”
3. **Qualifying Event.**
 - a. Qualifying events for an employee include:
 - i. Voluntary termination;
 - ii. Involuntary termination (except for gross misconduct);
 - iii. Reduction in hours rendering the employee ineligible under the insurance plan; or
 - iv. A covered employee becomes entitled to Medicare benefits.
 - b. Qualifying events that allow a qualified beneficiary to elect continuation coverage include:
 - i. A covered employee’s death;
 - ii. A covered employee’s termination (other than for gross misconduct), or reduction in hours;
 - iii. Divorce or legal separation from a covered employee;
 - iv. A covered employee’s becoming entitled to Social Security benefits; or
 - v. A dependent child’s ceasing to be a dependent under the plan.
 - c. The filing of bankruptcy proceedings by the employer is a qualifying event with respect to a retired employee who retired before the elimination of coverage and employees spouse, dependent children, or surviving spouse, where the employer substantially eliminates coverage within one year (before or after) of the bankruptcy filing.
4. **The Length of the Continuation Period.** This is determined by the nature of the qualifying event.
 - a. 18 months: covered employee’s termination or reduction in hours
 - b. 36 months: most other qualifying events

5. **Termination of the Continuation Period.** COBRA coverage may be terminated before the end of the otherwise applicable coverage period if:
 - a. The employer ceases to provide any group health coverage to any employee;
 - b. Coverage ceases because of a failure to make a timely health-insurance premium payment;
 - c. The qualified beneficiary obtains group health insurance (as long as the new health plan does not exclude or limit coverage on the basis of a pre-existing condition of the beneficiary);
 - d. A beneficiary becomes eligible for Medicare; or
 - e. Legal separation between the spouse and the employee terminates the coverage.
6. **Coverage, Terms, and Premiums.**
 - a. Continuation coverage must be identical to the plan's coverage for similarly situated beneficiaries who have not experienced a qualifying event.
 - b. The premium for continuation coverage cannot exceed 102% of the otherwise-applicable plan premium.
 - c. At the end of the 18- or 36-month continuation period, the employer must offer conversion to an individual policy if the group plan includes a conversion privilege. HIPAA also has something to say about this situation (see HIPAA para. 4, below).

HIPAA

1. **Pre-Existing Condition Rule.**
 - a. **Applicability**
 - i. Insured and self-insured group plans
 1. unless self-funded non-federal plan exempts itself from specific HIPAA requirements
 - ii. Local governments
 - b. **Definition** of “pre-existing condition exclusion”: a limitation or exclusion placed on the benefits a plan will provide with respect to a participant or beneficiary's physical or mental condition that existed before the date of enrollment in the plan by the participant or beneficiary, regardless of whether the participant or beneficiary received any medical advice, diagnosis, care or treatment before the enrollment date
 - c. **When may a group health plan impose a pre-existing condition exclusion?**
 - i. The exclusion concerns a physical or mental condition, regardless of its cause, for which medical advice, diagnosis, care, or treatment has been suggested and received within the 6-month period ending on the enrollment date;
 - ii. The exclusion applies for no longer than 12 months after the enrollment date (or 18 months in the case of a late enrollee¹); and

¹ A “late enrollee” is someone who does not accept health insurance coverage at the earliest opportunity it is offered (usually at the time employment commences), *unless* the delay was because at the time

- iii. The period of any exclusion is reduced by the aggregate periods of creditable coverage to the participant or beneficiary as of the date of enrollment.

Example: Patient has had a diagnosis of scoliosis for 30 years but has not sought or received treatment in the 6 months prior to enrolling in a group health plan. The plan cannot exclude coverage for scoliosis treatment. Even if the patient had received treatment in the previous 6 months, scoliosis treatment could be excluded for 12 (or 18) months, but unrelated treatment (say, for a heart attack experienced on the first day of plan coverage) may not be excluded.

d. **“Creditable coverage” defined**

- i. Creditable coverage is prior continuous coverage (e.g., the period of continuous coverage under the immediately prior health insurance policy of the new enrollee’s previous employer).
- ii. If there’s been 12 months of creditable coverage (18 months in the case of a late enrollee), without a break in coverage, an insurer may not refuse to provide coverage to a person with a preexisting condition.
- iii. If the new plan has a waiting period prior to commencing coverage, that does not count as a break in coverage. (Can you imagine why not?)
 - 1. Also, if the plan has both a waiting period and a pre-existing condition exclusion period, the pre-existing condition exclusion period starts to run on the same date that the waiting period starts.
- iv. If there is a break in coverage of 63 days or more (*not*, as the casebook states at pp. 714 & 715, of more than 63 days) then creditable coverage is destroyed and the health plan may exclude a preexisting coverage.
 - 1. This is where COBRA’s “continuation coverage” comes in handy!

Example: Employee has 20 years of coverage under his previous employer’s health plan. He drops his coverage for 3 months, then re-enrolls for 8 months before changing jobs. His creditable coverage is 8 months, and his new plan may exclude coverage of a pre-existing condition for only 4 months.

- e. HIPAA also prohibits the imposition of a preexisting-condition exclusion based on pregnancy, regardless of the period of creditable coverage (if any) or genetic predisposition.
- f. Also, plans cannot apply a pre-existing condition exclusion to newborns or adopted children under the age of 18, as long as they are enrolled within 30 days after birth or adoption.
 - i. This rule doesn’t apply if the newborn or adoptee experiences a break of more than 62 days in creditable coverage.

enrollment was offered, the enrollee was covered by COBRA continuation coverage or was covered as a dependent of someone else.

2. **Enrollment eligibility** (as distinguished from a pre-existing condition exclusion that applies to a participant or beneficiary *after* enrollment) may not be based on any of the following factors:
 - a. Health status;
 - b. Physical or mental medical condition;
 - c. Claims experience;
 - d. Receipt of health care;
 - e. Medical history;
 - f. Genetic information;
 - g. Evidence of insurability; or
 - h. Disability.
3. **Premium Discrimination.** HIPAA also prohibits plans from charging a higher premium for an employee based upon the health considerations listed in the preceding paragraph.
4. **Individual Coverage.** Insurers that sell health insurance in the individual market are required to make insurance available to all applicants with at least 18 months of creditable coverage who (i) have lost that coverage, (ii) have exhausted their COBRA continuation coverage, and (iii) have not had a gap of more than 62 days between the end of their insurance coverage and their application for extension coverage.
 - a. Insurers cannot impose a pre-existing condition exclusion under such circumstance.
 - b. Such individual policies must be renewable at the insured's option.