Frequently Asked Questions
Concerning COBRA

Q-1: What is COBRA continuation coverage?

A-1: (a) If a qualifying event occurs, each qualified beneficiary who loses coverage must be offered an opportunity to elect to receive the group health plan coverage that is provided to similarly situated non-COBRA beneficiaries (ordinarily, the same coverage that the qualified beneficiary had on the day before the qualifying event).

(b) In the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the child is generally entitled to elect immediately to have coverage as a covered dependent of the employee..

Q-2: What is a qualifying event?

A-2: (a) A *qualifying event* is:

(1) The death of a covered employee;

(2) The termination (other than by reason of the employee's gross misconduct), or reduction of hours, of a covered employee's employment;

(3) The divorce or legal separation of a covered employee from the employee's spouse;

(4) A covered employee's becoming entitled to Medicare benefits; or

(5) A dependent child's ceasing to be a dependent child of a covered employee under the generally applicable requirements of the plan.

(b) The qualifying event of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the qualifying event giving rise to the period of COBRA continuation coverage during which the child is born or placed for adoption. If a second qualifying event has occurred before the child is born or placed for adoption (such as the death of the covered employee), then the second qualifying event also applies to the newborn or adopted child.

Q-3: Who is a qualified beneficiary?

A-3: (a) a *qualified beneficiary* is--

(1) Any individual who, on the day before a qualifying event, is covered under a group health plan

(2) Any child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage.

(b) A qualified beneficiary who does not elect COBRA continuation coverage in connection with a qualifying event ceases to be a qualified beneficiary at the end of the election period.

Q-4: What is a group health plan?

A-4: (a) A *group health plan* is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer.

(b) Health care has the same meaning as medical care under section 213(d). Thus, health care generally includes the diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body.

(c) A plan does not constitute a group health plan subject to COBRA if substantially all of the coverage provided under the plan is for qualified long-term care services.

(d) Under section 106(b)(5), amounts contributed by an employer to a medical savings account (as defined in section 220(d)) are not considered part of a group health plan subject to COBRA. Thus, a plan is not required to make COBRA continuation coverage available with respect to amounts contributed by an employer to a medical savings account. A high deductible health plan does not fail to be a group health plan subject to COBRA merely because it covers a medical savings account holder.

Q-5: What group health plans are subject to COBRA?

A-5: (a) All group health plans are subject to COBRA except the following:

(1) Small-employer plans;

(2) Church plans; and

(3) Governmental plans.

(b) The COBRA continuation coverage requirements generally do not apply to group health plans that are excepted from COBRA. However, a small-employer plan otherwise excepted from COBRA is nonetheless subject to COBRA with respect to qualified beneficiaries who experience a qualifying event during a period when the plan is not a small-employer plan.

Q-6: What is a small-employer plan?

A-6: (a) A *small-employer plan* is a group health plan maintained by an employer that normally employed fewer than 20 employees during the preceding calendar year

(b) An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year.

(c) All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had fewer than 20 employees; however, an individual who is not a common law employee of the employer is not taken into account.

Q-7: Who are the similarly situated non-COBRA beneficiaries?

A-7: S*imilarly situated non-COBRA beneficiaries* means the group of covered employees and covered dependents of covered employees receiving coverage under a group health plan maintained by the employer who are receiving that coverage for a reason other than the rights provided under the COBRA continuation coverage requirements and who, based on all of the facts and circumstances, are most similarly situated to the situation of the qualified beneficiary immediately before the qualifying event.

Q-8: Are the facts surrounding a termination of employment (such as whether it was voluntary or involuntary) relevant in determining whether the termination of employment is a qualifying event?

A-8: Apart from facts constituting gross misconduct, the facts surrounding the termination or reduction of hours are irrelevant in determining whether a qualifying event has occurred. Thus, it does not matter whether the employee voluntarily terminated or was discharged.

Q-9: What is the election period and how long must it last?

A-9: (a) The election period begins the date the qualified beneficiary loses coverage on account of the qualifying event. The election period ends the date that is 60 days after the later of--

(1) The date the qualified beneficiary would lose coverage on account of the qualifying event; or

(2) The date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage.

(b) An election is considered to be made on the date it is sent to the plan administrator.

Q-10: Is a covered employee or qualified beneficiary responsible for informing the plan administrator of the occurrence of a qualifying event?

A-10: (a) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of a qualifying event that is either a dependent child's ceasing to be a dependent child under the generally applicable requirements of the plan or a divorce or legal separation of a covered employee. The group health plan is not required to offer the qualified beneficiary an opportunity to elect COBRA continuation coverage if the notice is not provided to the plan administrator within 60 days after the later of--

(1) The date of the qualifying event; or

(2) The date the qualified beneficiary would lose coverage on account of the qualifying event.

(b) If more than one qualified beneficiary would lose coverage on account of a divorce or legal separation of a covered employee, a timely notice of the divorce or legal separation that is provided by the covered employee or any one of those qualified beneficiaries will be sufficient to preserve the election rights of all of the qualified beneficiaries.

Q-11: During the election period and before the qualified beneficiary has made an election, must coverage be provided?
A- 11: In general, each qualified beneficiary has until 60 days after the later of the date the qualifying event would cause her or him to lose coverage or the date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage to decide whether to elect COBRA continuation coverage. If the election is made during that period, coverage must be provided from the date that coverage would otherwise have been lost.

Q-12: Is a waiver before the end of the election period effective to end a qualified beneficiary's election rights?
A-12: If, during the election period, a qualified beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period.

Q-13: Can an employer withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA continuation coverage, elects and pays for such coverage, or allows the election period to expire?
A-13: No. An employer must not withhold anything to which a qualified beneficiary is otherwise entitled (by operation of law or other agreement) in order to compel payment for COBRA continuation coverage or to coerce the qualified beneficiary to give up rights to COBRA continuation coverage (including the right to use the full election period to decide whether to elect such coverage). Such a withholding constitutes a failure to comply with the COBRA continuation coverage requirements. Furthermore, any purported waiver obtained by means of such a withholding is invalid.

Q-14: Can each qualified beneficiary make an independent election under COBRA?
A-14: Yes. Each qualified beneficiary (including a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage.

Q-15: How long must COBRA continuation coverage be made available to a qualified beneficiary?
A-15: (a) Continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates--

(1) The last day of the maximum coverage period

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary;

(3) The date upon which the employer ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan;

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits; and

(6) In the case of a qualified beneficiary entitled to a disability extension, the later of--

(i) Either 29 months after the date of the qualifying event, or the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled qualified beneficiary whose disability resulted in the qualified beneficiary's being entitled to the disability extension is no longer disabled, whichever is earlier; or

(ii) The end of the maximum coverage period that applies to the qualified beneficiary without regard to the disability extension.

(b) In the case of an individual who is not a qualified beneficiary and who is receiving coverage under a group health plan solely because of the individual's relationship to a qualified beneficiary, if the plan's obligation to make COBRA continuation coverage available to the

qualified beneficiary ceases under this section, the plan is not obligated to make coverage available to the individual who is not a qualified beneficiary.

Q-16: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to coverage under another group health plan?

A-16: (a) If a qualified beneficiary first becomes covered under another group health plan (including for this purpose any group health plan of a governmental employer or employee organization) after the date on which COBRA continuation coverage is elected for the qualified beneficiary, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary first becomes covered under the other group health plan (even if the other coverage is less valuable to the qualified beneficiary). By contrast, if a qualified beneficiary first becomes covered under another group health plan on or before the date on which COBRA continuation coverage is elected, then the other coverage cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) The requirement of this paragraph (b) is satisfied if the qualified beneficiary is actually covered, rather than merely eligible to be covered, under the other group health plan.

(c) The requirement of this paragraph (c) is satisfied if the other group health plan does not contain any exclusion or limitation with respect to any preexisting condition of the qualified beneficiary (other than such an exclusion or limitation that does not apply to, or is satisfied by, the qualified beneficiary by reason of the provisions in section 9801 relating to limitations on preexisting condition exclusion periods in group health plans).

Q-17: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to the qualified beneficiary's entitlement to Medicare benefits?

A-17: If a qualified beneficiary first becomes entitled to Medicare benefits after the date on which COBRA continuation coverage is elected for the qualified beneficiary, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary becomes so entitled. By contrast, if a qualified beneficiary first becomes entitled to Medicare benefits on or before the date that COBRA continuation coverage is elected, then the qualified beneficiary's entitlement to Medicare benefits cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

Q-18: When does the maximum coverage period end?

A-18: (a) The maximum coverage period ends 36 months after the qualifying event for dependents of the employee who are qualified beneficiaries on their own behalf. The maximum coverage period for a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the remaining balance of the period of COBRA continuation available to the employee.

(b) In the case of a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the qualifying event if there is no disability extension, and 29 months after the qualifying event if there is a disability extension

(c) If a covered employee becomes entitled to Medicare benefits before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period for qualified beneficiaries **other than the covered employee** ends on the later of--

(i) 36 months after the date the covered employee became entitled to Medicare benefits; or

(ii) 18 months (or 29 months, if there is a disability extension) after the date of the covered employee's termination of employment or reduction of hours of employment.

(b) The end of the maximum coverage period is measured from the date of the qualifying event even if the qualifying event does not result in a loss of coverage under the plan until a later date.

Q-19: How does a qualified beneficiary become entitled to a disability extension?
A-19: A qualified beneficiary becomes entitled to a disability extension if the following requirements are satisfied:

(a) An employee experiences a termination, or reduction of hours of employment;

(b) An individual (whether or not the covered employee) who is a qualified beneficiary in connection with the qualifying event described in paragraph (a) is determined under Title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (a). For purposes of this paragraph (b), an individual is determined to be disabled within the first 60 days of COBRA continuation coverage if the individual has been determined under Title II or XVI of the Social Security Act to have been disabled before the first day of COBRA continuation coverage and has not been determined to be no longer disabled at any time between the date of that disability determination and the first day of COBRA continuation coverage.

(c) Any of the qualified beneficiaries affected by the qualifying event provides notice to the plan administrator of the disability determination on a date that is both within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the qualifying event.

Q-20: Under what circumstances can the maximum coverage period be expanded?
A-20: The maximum coverage period can be expanded if:

(a) The requirements for a disability extension are met, or

(b) A qualifying event that gives rise to an 18 or 29-month maximum coverage period is followed, within that 18 or 29-month period, by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period). In such a case, the original 18 or 29-month period is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event

Q-21: Must a qualified beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?
A-21: If a qualified beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the maximum coverage period, the group health plan must, during the 180-day period that ends on that expiration date, provide the qualified beneficiary the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated non-COBRA beneficiaries under the group health plan. If such a conversion option is not otherwise generally available, it need not be made available to qualified beneficiaries.

Q-22: Can a group health plan require payment for COBRA continuation coverage?
A-22: (a) Yes. For any period of COBRA continuation coverage, a group health plan can require the payment of an amount that does not exceed 102 percent of the applicable premium for that period. A group health plan can terminate a qualified beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made to the plan with respect to that qualified beneficiary.

(b) A group health plan is permitted to require the payment of an amount that does not exceed 150 percent of the applicable premium for the extended period of COBRA continuation coverage covering a disabled qualified beneficiary if the coverage would not be required to be made available in the absence of a disability extension.

Q-23: When is the applicable premium determined and when can a group health plan increase the amount it requires to be paid for COBRA continuation coverage?

A-23: (a) The applicable premium for each determination period must be computed and fixed by a group health plan before the determination period begins. A determination period is any 12-month period selected by the plan, but it must be applied consistently from year to year.

(b) During a determination period, a plan can increase the amount it requires to be paid for a qualified beneficiary's COBRA continuation coverage only in the following three cases:

(1) The plan has previously charged less than the maximum amount permitted and the increased amount required to be paid does not exceed the maximum amount permitted;

(2) The increase occurs during the disability extension and the increased amount required to be paid does not exceed the maximum amount permitted; or

(3) A qualified beneficiary changes the coverage being received.

(c) If a plan allows similarly situated active employees who have not experienced a qualifying event to change the coverage they are receiving (i.e. open enrollment), then the plan must also allow each qualified beneficiary to change the coverage being received on the same terms as the similarly situated active employees. The premium would change in accordance with the change in plan.

Q-24: Must a plan allow payment for COBRA continuation coverage to be made in monthly installments?

A-24: Yes. A group health plan must allow payment for COBRA continuation coverage to be made in monthly installments. A group health plan is permitted to also allow the alternative of payment for COBRA continuation coverage being made at other intervals (for example, weekly, quarterly, or semiannually).

Q-25: What is timely payment for COBRA continuation coverage?

A-25: (a) Except as provided in paragraph (b), timely payment for a period of COBRA continuation coverage under a group health plan means payment that is made to the plan by the date that is 30 days after the first day of that period.

(b) Notwithstanding paragraph (a), a plan cannot require payment for any period of COBRA continuation coverage for a qualified beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that qualified beneficiary.

Q-26: What deductibles apply if COBRA continuation coverage is elected?

A-26: (a) Qualified beneficiaries electing COBRA continuation coverage generally are subject to the same deductibles as similarly situated non-COBRA beneficiaries. If a qualified beneficiary's COBRA continuation coverage begins before the end of a benefit, credit if given for expenses incurred toward those deductibles before the beginning of COBRA continuation coverage.

(b) If a deductible is computed separately for each individual receiving coverage under the plan, each individual's remaining deductible amount (if any) on the date COBRA continuation coverage begins is equal to that individual's remaining deductible amount immediately before that date.

(c) If a deductible is computed on a family basis, the remaining deductible for the family on the date that COBRA continuation coverage begins depends on the members of the family electing COBRA continuation coverage.

Q-27: How do a plan's limits apply to COBRA continuation coverage?

A-27: Limits are treated in the same way as deductibles. This rule applies both to limits on plan benefits (such as a maximum number of hospital days or dollar amount of reimbursable expenses) and limits on out-of-pocket expenses. This rule applies equally to annual and lifetime limits and applies equally to limits on specific benefits and limits on benefits in the aggregate under the plan.

Q-28: Can a qualified beneficiary who elects COBRA continuation coverage ever change from the coverage received by that individual immediately before the qualifying event?

A-28: In general, a qualified beneficiary need only be given an opportunity to continue the coverage that she or he was receiving immediately before the qualifying event. This is true regardless of whether the coverage received by the qualified beneficiary before the qualifying

event ceases to be of value to the qualified beneficiary, such as in the case of a qualified beneficiary covered under a region-specific health maintenance organization (HMO) who leaves the HMO's service region. The only situations in which a qualified beneficiary must be allowed to change from the coverage received immediately before the qualifying event are:

(a) If a qualified beneficiary participates in a region-specific benefit package (such as an HMO or an on-site clinic) that will not service her or his health needs in the area to which she or he is relocating (regardless of the reason for the relocation), the qualified beneficiary must be given, within a reasonable period after requesting other coverage, an opportunity to elect alternative coverage that the employer makes available to active employees. However, the employer is not required to make any other coverage available to the relocating qualified beneficiary if the only coverage the employer makes available to active employees is not available in the area to which the qualified beneficiary relocates (because all such coverage is region-specific and does not service individuals in that area).

(b) If an employer 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.

Q-29: How do the COBRA continuation coverage requirements apply to cafeteria plans and other flexible benefit arrangements?

A-29: The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event.