

CalCPA Health COBRA Administration Authorization Agreement

The Group Insurance Trust of the California Society of CPA's (CalCPA Health) provides Participating Employers that are subject to (Federal) COBRA, complimentary access to COBRA administration services. Firms may choose to:

Self-administer COBRA or utilize a COBRA services vendor at your own cost

Or

Use services provided by CalCPA Health's COBRA vendor, with fees paid by the Trust.

Under Federal COBRA regulations employers may cede their administrative functions to a third party but the ultimate COBRA responsibility always remains with the employer. To choose to utilize the COBRA services available through your status as a Participating Employer in the Trust, sign and return this authorization agreement to:

Scanned via email
calcpahealth@calcpahealth.com

Fax
(877) 237-4519

Mailing Address
Banyan Administrators
1215 Manor Drive, Suite 200
Mechanicsburg, PA 17055

Effective Date and Termination:

This Agreement is effective on _____, ("Effective Date")

This Agreement terminates automatically on the day the Employer ceases to be a Participating Employer in the Trust; or by either Employer or Trust by giving the other party thirty (30) days written notice.

The Trust may cancel its offer of complimentary COBRA services immediately if required by tax, ERISA, Federal or State regulations.

Survival of Certain Provisions. Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity, confidentiality, and privacy provisions of this Agreement shall survive its termination.

Documents. Employer agrees that it will not use, reproduce or make available for others to use or reproduce, any documents created or prepared by Trust and its vendors following the termination of this Agreement. Such documents include, but are not limited to, COBRA notices, plan documents, summary plan descriptions, administrative forms, and other communications to Participants.

Definitions:

"Active COBRA Participant" means a Qualified Beneficiary who has elected and is enrolled in Employer-provided COBRA continuation coverage.

"Agreement" means this Administrative Services Agreement, including all Appendices hereto.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Employer" means a Participating Employer in the Trust

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Group Health Plan" means a group health plan under ERISA Section 607(1).

"Named Fiduciary" means the named fiduciary as defined in ERISA Section 402(a)(1).

"Participant" has the meaning set forth in Section 1.2.

"Plan Administrator" means the administrator as defined in ERISA Section 3(16)(A).

"Program" or **"Programs"** means a plan or program established by Employer for its employees for which Trust or its vendors are providing administrative services pursuant to this Agreement.

"Qualified Beneficiary" means an employee, former employee, spouse, former spouse, dependent, former dependent or other individual as described in Section 4980B(g)(1) of the Code who has rights to elect to continue Employer-provided group health coverage upon the occurrence of a qualifying event, as defined in Section 4980B(f)(3) of the Code.

"Trust" means the Group Insurance Trust of the California Society of CPA's or its designee(s) or specified services vendors.

Scope of Services Provided by Trust

The Trust (through its designated vendor(s)) will provide the following COBRA services:

- Initial COBRA notices
- COBRA Election notices
- Open Enrollment notices to COBRA Participants
- Billing and Processing of COBRA Participant premium payments

Trust shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records. For the Employer to address disputes, information requests and litigation with participants and regulatory agencies, Trust will provide copies of records required for these purposes, upon the Employer's reasonable request.

The Trust may change administration vendors and modify this agreement upon 30 days written notice.

Service Charges

Trust will retain the allowable COBRA administrative fees remitted by Qualifying Participants to offset administrative costs.

Responsibilities of Employer

Employer is considered the Plan Administrator and Named Fiduciary of all aspects of COBRA for the purposes of ERISA. Employer has the sole authority and responsibility for COBRA and its operation, including the authority and responsibility for administering, construing and interpreting provisions and making all determinations thereunder.

Employer gives Trust (and its designees) the authority to act on behalf of Employer as Benefit Administrator in connection with COBRA, but only as expressly stated in this Agreement or as mutually agreed in writing by Employer and Trust. *Examples.* Without limiting Employer's responsibilities as described in this Agreement, and unless otherwise stated in this Agreement it shall be Employer's sole responsibility (as Plan Administrator) and duty to: ensure compliance with COBRA; amend the Programs as necessary to ensure ongoing compliance with applicable law; advise Trust of other employee benefit plans or corporate entities that are part of the controlled group or affiliated service group, entities subsequently acquired by Employer or an entity in its controlled group; file any required tax or governmental returns (including Form 5500); determine if individuals are eligible for participation; determine if and when a valid election change has occurred; and take all other steps necessary to maintain and operate in compliance with, ERISA, the Code and other applicable federal and state laws.

Duties of Employer

Employer has the following duties and responsibilities during the term of this Agreement:

- A. Notify Trust within thirty (30) days after Group Health Plan coverage begins for an employee and/or dependent spouse.
- B. Notify Trust that a Qualified Beneficiary, as defined in COBRA, has lost coverage under a Group Health Plan due to a Qualifying Event, as defined in COBRA. For this purpose, a Qualifying Event shall include, but shall not be limited to, the following:
 - i. Employee's reduction in hours or termination of employment;
 - ii. Employee's death;
 - iii. Employee's entitlement to Medicare;
 - iv. Employee's divorce/legal separation;
 - v. Dependent child becoming ineligible for coverage; and
 - vi. Employer's filing for bankruptcy (where the Group Health Plan provides retiree coverage).

In the case of a Qualifying Event described in (i), (ii), (iii), and (vi) above, Employer must provide notice to Trust within thirty (30) days after the Qualifying Event has occurred.

In the case of a Qualifying Event described in (iv) and (v) above, the Qualified Beneficiary must provide written notice to Trust or Employer. A form and instructions for Qualified Beneficiaries to provide notice for this purpose is included with the Initial COBRA Notice. In addition, Trust shall make the form available to Employer to disseminate via other means (such as with the summary plan description, open enrollment materials, etc.). Employer must provide notice to Trust within ten (10) days after receiving written notice of a Qualifying Event from the Qualified Beneficiary.

- C. Notify Trust within ten (10) days after the date Employer has knowledge that a Qualified Beneficiary has experienced a Secondary Qualifying Event during the initial 18-month COBRA continuation period. Examples of a Secondary Qualifying Event include, but shall not be limited to, the following:
 - i. The initial 18-month COBRA continuation period may be extended for a Qualified Beneficiary who is a dependent if another Qualifying Event occurs during the initial 18-month period. However, in no event may the total continuation period exceed thirty-six (36) months from the date of the initial Qualifying Event.

- ii. The initial 18-month COBRA continuation period may be extended for a Qualified Beneficiary and the Qualified Beneficiaries who are his or her dependents if the Qualified Beneficiary is determined to be entitled to Social Security disability benefits within sixty (60) days of the initial Qualifying Event. In this situation, an additional eleven (11) months of COBRA continuation coverage is available, up to twenty-nine (29) months total.
 - iii. The Qualified Beneficiary must provide written notice of the Secondary Qualifying Event. A form for Qualified Beneficiaries to provide notice for this purpose is included with the Initial COBRA Notice. In addition, Trust shall make the form available to Employer to disseminate via other means (such as with the Summary Plan Description, open enrollment materials, etc.). Employer must provide notice to Trust within ten (10) days after receiving written notice from the Qualified Beneficiary.
- D. Notify Trust within ten (10) days after the date Employer has knowledge that an event has occurred which will terminate a Qualified Beneficiary's COBRA continuation coverage prior to the end of the applicable COBRA continuation coverage period. Examples include, but shall not be limited to, the following:
 - i. The Qualified Beneficiary becomes covered under another group health plan. However, this provision does not apply during any time period the other group health plan contains a limitation or exclusion with regard to any pre-existing condition, other than a limitation or exclusion which does not apply to the Qualified Beneficiary or satisfied by the Qualified Beneficiary due to the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA");
 - ii. A Qualified Beneficiary becomes entitled to Medicare;
 - iii. Occurrence of any event (e.g., submission of fraudulent benefit claims) that permits termination of coverage for cause with respect to covered employees or their spouses or dependent children who have coverage under the Plan for a reason other than the COBRA coverage requirements of federal law; or
 - iv. If the 11-month extension due to disability is being provided and there is a final determination that the Qualified Beneficiary is no longer disabled.

Notification shall be made in a reasonable form and method by mail, fax or email.

- E. Should the Employer not meet any of the timelines in A through D above, Trust will provide the related notice to a Qualified Beneficiary in a reasonable time after receiving notice from the Employer, with no liability for the delayed notice.
- F. Notify Trust within ten (10) days after the date Employer has knowledge that it is no longer subject to COBRA with respect to any of the Group Health Plan(s). An example includes the first day of a calendar year following a calendar year when Employer did not employ twenty (20) or more employees on at least 50% of its working days during that year. Notification shall be made in a reasonable form and method by mail, fax or email.
- G. Employer shall maintain the Group Health Plan(s) in accordance with ERISA, the Code and other applicable law. In addition, Employer shall include all legally required information regarding COBRA in a manner consistent with Trust administrative practices.

Severability; Headings

If any term of this Agreement is declared invalid by a court, the same shall not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of Sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Indemnification

Employer understands and agrees that, in order for the Trust and its designees, to fulfill its duties as stated in this Agreement, Trust will need to rely on the oral and/or written representations of Employer's directors, officers and employees, Qualified Beneficiaries and Program fiduciaries, insurers and agents. Employer agrees to hold harmless the Trust and its directors, officers and employees for any loss or damage to Employer or its Program(s) due to the Trust's good faith reliance on these oral and/or written representations.

The Employer agrees to indemnify, hold harmless and defend the Trust, its vendors, directors, officers and employees against any and all claims, lawsuits, settlements, judgments, costs, taxes, fines, penalties and expenses, including attorney fees, resulting from or arising out of or in connection with any function or action under this Agreement at any time, unless it is determined that the liability was the direct consequence of gross negligence, intentional misconduct, or fraud by the trust, its vendors, or any of its directors, officers or employees.

Compliance; Non-Waiver

Failure by Employer or Trust to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is made in writing and mutually agreed to by both parties.

Notices and Communications

Notices. All notices provided for herein shall be sent by confirmed facsimile, confirmed e-mail, guaranteed overnight mail, with tracing capability, certified mail, return receipt requested, or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes.

Notices required by this Agreement are effective upon the earlier of actual receipt by an authorized officer of the party or 3 days after they are mailed by certified mail, return receipt requested.

Communications. Employer agrees that Trust (and its vendors) may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact designated by Employer ("Named Contact") and specifically agrees to indemnify Trust and its vendors and hold it harmless:

For any such communications directed to Employer through the Named Contact attempted via telefax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted.

HIPAA Privacy and Security Rules

Any Group Health Plan sponsored by Employer for which Trust provides services under this Agreement is a "Covered Entity" under the HIPAA privacy and security rules, as amended by the federal law known as HITECH ("HIPAA/HITECH"). With respect to those Group Health Plans, Trust is a "Business Associate" under HIPAA/HITECH. The parties agree to enter into a Business Associate Agreement pursuant to HIPAA/HITECH.

Complete Agreement: Governing Law

This Agreement is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties, whether oral or written. Except to the extent preempted by federal law, this Agreement shall be construed, enforced and governed by the laws of the State of California.

Named Employer Contact: _____

Employer: Signature: _____

Title: _____

Print Name: _____

Trust: Signature: _____

Title: _____

Print Name: _____