

COBRA Compliance

Model COBRA Notices Updated for ACA Changes

The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires covered employers to provide former employees and dependents who lose group health benefits with an opportunity to continue group health insurance coverage. Individuals who are eligible for health coverage under COBRA are known as "qualified beneficiaries." Under COBRA, group health plans must provide qualified beneficiaries with certain notices explaining their COBRA rights.

The Affordable Care Act (ACA) made health insurance Exchanges available for individuals and small businesses to purchase health coverage, beginning January 1, 2014. The Exchanges are health insurance marketplaces where consumers can compare private health insurance options and purchase insurance.

On May 2, 2014, the Department of Labor (DOL) released updated versions of the model general notice and model election notice under COBRA. The DOL also issued proposed regulations, which would update existing regulations with respect to the COBRA model notices. These updates are intended to reflect that the Exchanges are now open and clarify the impact of the Exchanges on COBRA continuation coverage.

The DOL also released a Frequently Asked Question (FAQ) related to the proposed changes to the model notices.

Plan sponsors should consider revising their COBRA notices to include these ACA updates. Because the Exchanges and subsidies took effect in 2014, it is possible that fewer qualified beneficiaries will elect COBRA coverage, and this may result in a cost-savings for the employer-sponsored health plan.

COBRA Notice Requirements

Under COBRA, group health plans must provide covered employees and their families with certain notices explaining their COBRA rights. For example, a group health plan must provide qualified beneficiaries with:

- A notice of COBRA rights "at the time of commencement of coverage" under the plan (**general notice**); and
- A notice describing their rights to COBRA coverage and how to make an election (**election notice**).

The DOL has provided model notices that plans may use to satisfy the COBRA notice requirements.

General Notice

The general notice must be provided to qualified beneficiaries within **90 days after initial plan coverage begins**. A general notice must also be sent to any new dependents added to the plan after the employee's initial enrollment. In this case, the general notice must be provided within 90 days of the effective date of the new dependent's coverage.

The general notice is required to include:

- The name of the plan and the name, address and telephone number of someone to contact for more information on COBRA and the plan;
- A general description of the continuation coverage provided under the plan;
- An explanation of what qualified beneficiaries must do to notify the plan of qualifying events or disabilities;
- An explanation of the importance of keeping the plan administrator informed of addresses of the participants or beneficiaries; and
- A statement that the general notice does not fully describe COBRA or the plan, and that more complete information is available from the plan administrator and in the plan's summary plan description (SPD).

Where a covered individual experiences a qualifying event within 90 days of becoming covered under the plan, an election notice should be provided to the covered individual. The general notice need not be provided.

Election Notice

The election notice must be provided to the qualified beneficiaries within **14 days after the plan administrator receives notice** that a qualifying event has occurred.

The election notice is required to include:

- The name of the plan and the name, address and telephone number of the plan's COBRA administrator;
- Identification of the qualifying event;
- Identification of the qualified beneficiaries (by name or by status);
- An explanation of the qualified beneficiaries' right to elect COBRA continuation coverage;
- The date coverage will terminate (or has terminated) if COBRA continuation coverage is not elected;
- How to elect COBRA continuation coverage;
- What will happen if COBRA continuation coverage isn't elected or is waived;
- What COBRA continuation coverage is available, for how long and (if it is for less than 36 months) how it can be extended for disability or second qualifying events;
- How COBRA continuation coverage might terminate early;
- Premium payment requirements, including due dates and grace periods;
- A statement of the importance of keeping the plan administrator informed of the addresses of qualified beneficiaries; and
- A statement that the election notice does not fully describe COBRA or the plan and that more information is available from the plan administrator and in the plan's SPD.

Previously, on May 8, 2013, the DOL issued Technical Release 2013-02 and an updated model election notice, which included information regarding health coverage options that would soon be available, beginning January 1, 2014, through the ACA's Exchanges. The revised notices released on May 2, 2014, contain further updates regarding the Exchanges.

Updated Model Notices

According to the DOL, some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage, such as coverage that is available through the Exchanges. Qualified beneficiaries:

- May be eligible for a subsidy for coverage purchased through an Exchange; and
- May find that Exchange coverage is more affordable than COBRA.

As a result, the DOL released updated versions of the model general notice and model election notice that plans may use to satisfy the requirement to provide the general notice and election notice under COBRA. These updated model notices reflect that the Exchanges are now open and clarify the impact of the Exchanges on COBRA continuation coverage. The updated model notices also provide information on special enrollment rights that are available through the Exchanges for COBRA qualified beneficiaries. According to the DOL, the proposed changes would offer information on more affordable options available through the Exchanges, where employees may be eligible for financial assistance that would not otherwise be available for COBRA coverage.

As with the earlier model notices, in order to use the models properly, the plan administrator must complete them by filling in the blanks with the appropriate plan information. Employers are not required to use the DOL's model COBRA notices. However, use of the model notices, appropriately completed, will be considered by the DOL to be good faith compliance with COBRA's notice content requirements.

The COBRA model notices are available in modifiable, electronic form. The DOL is in the process of developing Spanish versions of the model general notice and model election notice, and will post them as soon as they are available. The notices and related information can be found on the DOL's COBRA Continuation Coverage website.

Proposed Regulations

The DOL also issued proposed regulations, which would update existing regulations with respect to the COBRA model notices. The proposed regulations contain amendments to COBRA notice requirements to better align existing COBRA regulations with the ACA provisions already in effect, as well as any federal provisions that will apply in the future.

According to the DOL, these changes will allow the DOL to amend the model notices as necessary and provide the most current versions of the model notices on the DOL's website. These changes will also eliminate confusion that may result from multiple versions of the model notices being available in different locations.

These proposed regulations have not been finalized. Until the proposed regulations are finalized and effective, the DOL will consider use of the model notices available on its website, appropriately completed, to constitute compliance with COBRA's notice content requirements.

Exchange Enrollment for COBRA Qualified Beneficiaries

On April 21, 2014, the Department of Health and Human Services (HHS) issued an FAQ clarifying the situations in which a COBRA qualified beneficiary may enroll in a qualified health plan (QHP) through an Exchange and receive subsidies for that QHP coverage. In addition, on May 2, 2014, HHS issued a clarifying bulletin providing an Exchange special enrollment period for COBRA enrollees.

Under the ACA, individuals may only enroll in a QHP through an Exchange during **one of the following permitted enrollment periods**:

- The initial open enrollment period (October 1, 2013, through March 31, 2014);
- The annual open enrollment period (for 2015, November 15, 2014, through February 15, 2015); or
- A special enrollment period (provided under certain limited circumstances, such as marriage or birth of a child).

HHS' FAQ clarifies the situations in which a COBRA qualified beneficiary may enroll in a QHP through an Exchange and receive subsidies for that QHP coverage. In general, individuals who elect COBRA coverage may only enroll through an Exchange:

- During the Exchange's annual open enrollment period; or
- Upon expiration of their COBRA coverage.

During Exchange Open Enrollment

During an Exchange open enrollment period, an individual can voluntarily drop COBRA coverage and get an Exchange plan instead, **even if his or her COBRA coverage has not expired**. In this case, individuals may also be determined eligible for subsidies.

Outside of Exchange Open Enrollment

Outside of Exchange open enrollment, if an individual's **COBRA coverage expires**, he or she would qualify for a special enrollment period, and may be eligible for subsidies.

However, if the individual **voluntarily drops coverage** outside of Exchange open enrollment (and COBRA has not yet expired), he or she would not qualify for a special enrollment period. This includes individuals who lose COBRA due to nonpayment of premiums. During the next open enrollment period or when the individual's COBRA coverage expires, the individual could enroll in coverage through an Exchange and may be eligible for subsidies.

Special Enrollment Periods for Individuals Eligible for or Enrolled in COBRA

The ACA provides a special enrollment period through an Exchange to an individual who is eligible for COBRA continuation coverage when he or she:

- Initially is eligible for COBRA due to a loss of other minimum essential coverage; and
- Has exhausted his or her COBRA coverage.

In addition, COBRA beneficiaries may enroll in QHPs through an Exchange during the annual open enrollment period (and if they are determined eligible for any other special enrollment period outside of the open enrollment period).

HHS is concerned that model COBRA notices did not sufficiently address Exchange options for individuals eligible for COBRA and COBRA beneficiaries. These individuals may not have had enough information to understand their enrollment rights through the Exchanges. As a result, HHS has provided an additional **special enrollment period** based on exceptional circumstances so that individuals eligible for COBRA and COBRA beneficiaries are able to enroll in QHPs through the federally-facilitated Exchange (FFE).

Affected individuals have until **July 1, 2014**, to select QHPs in the FFE. To receive the special enrollment period, individuals should contact the Exchange call center at 1-800-318-2596 and state that they are calling about their COBRA benefits and the Exchange. Once determined eligible for the special enrollment period, consumers can then:

- View all plans available to them; and
- Continue the enrollment process over the phone or online.

State-based Exchanges are encouraged, but not required, to adopt similar special enrollment periods.

Source: Department of Labor and Department of Health and Human Services