

New Model COBRA (Consolidated Omnibus Budget Reconciliation Act) Notices Should be Used by Employers

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The Department of Labor has published a new model general COBRA notice and a new model election COBRA notice. The new model notices reflect that coverage is available in the public health insurance exchanges, i.e., the “Marketplace,” and include information on special enrollment rights in the Marketplace. Use of these model notices, properly completed, will be considered good faith compliance with the notice content requirements of COBRA. The new notices may be obtained on the [Department of Labor website](#).

Employers should utilize the new revised model notices on the Department of Labor website to ensure good faith compliance with applicable requirements.

Additional Information on COBRA, Marketplace

The Department of Labor provides additional guidance on COBRA in a series of FAQs published on its [website](#). The FAQs address, among other things, COBRA and insurance obtained through the Marketplace. They suggest that individuals who become entitled to COBRA consider other options before electing COBRA coverage.

These FAQs may be useful for employers and employees regarding COBRA and COBRA alternatives. Employers should consider amending other materials addressing the company health plan and COBRA, such as employee handbooks,

company policy manuals and summary plan descriptions to maximize employee understanding of the Marketplace alternatives.

Moreover, employees and employers should take note of the fact that an election of COBRA coverage generally provides health plan coverage retroactive to the date that coverage as an active employee ceased. However, an election of health plan coverage under a Marketplace plan generally will be prospective only.

Employers should be proactive in communicating with employees about the new Marketplace alternatives to COBRA coverage. Although employees eventually may move away from electing COBRA coverage following termination as a result of coverage available on the Marketplace, there are still traps for the unwary in making decisions regarding post-employment coverage.

Special Enrollment Period

There is a special enrollment period for health plans in the Marketplace available to persons eligible for COBRA when:

(1) such persons initially are eligible for COBRA due to a loss of other minimum essential coverage; and

(2) such persons' COBRA coverage is exhausted.

COBRA beneficiaries are also permitted to choose health plans in the Marketplace during the annual open enrollment period and if they are determined eligible for any other special enrollment periods outside of the open enrollment period.

As a result of Department of Health and Human Services ("HHS") concern that the model COBRA notices previously available did not adequately address Marketplace options for persons eligible for COBRA and COBRA beneficiaries, in a [CMS "Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria" bulletin](#), HHS has provided an additional special enrollment period for these individuals based on exceptional circumstances so that persons eligible for COBRA and COBRA beneficiaries may select a health plan in the federal Marketplace (assuming eligibility for such coverage) notwithstanding the fact that they previously elected COBRA coverage. Affected individuals have through July 1, 2014, to select a health plan in the federal Marketplace.

Employers may want to reach out to affected individuals to make them aware of this special enrollment right.

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