

NEW COBRA NOTICES AND FAQ

The Department of Labor posted new model COBRA notices and new FAQs last week because of the current COVID-19 pandemic and its potential impact on employment and employer-sponsored health plan coverage. The DOL press release on the notices and new FAQs can be found at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20200501>. Links to the new model notices and FAQs can be found in the press release.

MODEL COBRA NOTICES

Employers need not use DOL model notices; however, using them is seen as good faith compliance with COBRA. Two specific model notices have been updated:

- General Notice
- Election Notice

The changes include an expanded discussion of possible alternatives to COBRA including:

- Health Insurance Marketplace
- Medicare
- Medicaid
- Children's Health Insurance Program (CHIP)

- Other group health insurance options (such as a spouse's health plan through a special enrollment)

The election notice explains that electing COBRA may prevent you or delay you from choosing any of the alternatives above. A COBRA qualifying event will allow you to enroll midyear in the health insurance marketplace. However, if you do elect COBRA, you cannot enroll in the marketplace until the next open enrollment or if you exhaust your maximum COBRA benefit period.

The notices detail cases of Medicare-eligible qualified beneficiaries who did not enroll when they were initially eligible. They also point out that if a qualified beneficiary does not have coverage because of current employment status, COBRA will pay secondary to Medicare. Most health plans state that COBRA is secondary to Medicare and the plan will pay as if Medicare Part A and Part B are elected, even if they aren't. The notice states most qualified beneficiaries will need to elect Medicare Part A and Part B in addition to

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COBRA to have comprehensive medical coverage.

These changes provide more details on two situations that many employers struggle to help employees understand.

If you use a vendor to administer COBRA, be sure to ask whether the vendor will use the new DOL model notice language going forward.

NEW FAQs

The FAQs explain the new model notices. They also explain how to find modifiable electronic copies of these new forms to download. One FAQ deals with what happens when employees do not enroll in Medicare because they have been actively working. If they lose their jobs, can they enroll in Medicare now that the employer-sponsored health plan coverage has ended? The answer is yes, and, in fact, it may be better to enroll in Medicare rather than electing COBRA.

In general, if you don't enroll in Medicare Part A or B when you are first eligible because you are still employed, after the Medicare initial enrollment period you have an eight-month special enrollment period to sign up for Medicare Part A or B, beginning on the earlier of:

- The month after your employment ends
- The month after group health plan coverage based on current employment ends

If you don't enroll in Medicare and instead choose COBRA continuation coverage, you may have to pay a Part B late enrollment penalty and you may have a gap in coverage if you decide you want Part B later. If you elect COBRA continuation coverage and later enroll in Medicare Part A or B

before the COBRA continuation coverage ends, the plan may stop your continuation coverage. However, if Medicare Part A or B is effective on or before the date you elect COBRA, the employer cannot discontinue your COBRA coverage because you are now entitled to Medicare, even if you enroll in the other part of Medicare after the date you chose COBRA coverage.

The third question deals with which plan pays primary and which pays secondary if you have both Medicare and COBRA coverage. If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA continuation coverage will pay second (secondary payer). Certain plans may pay as if they are secondary to Medicare if you are Medicare eligible, even if you are not enrolled in Medicare.

CONCLUDING THOUGHTS

Unfortunately, the COVID-19 pandemic is causing many employers to lay off or furlough employees because of state shutdown orders. Many employers have continued coverage while employees have been laid off or furloughed. Unfortunately, some employers can now no longer afford to continue coverage and may terminate health plan coverage until they can bring employees back to work.

These new notices remind employees that less expensive options are available in lieu of COBRA. Also, the impact on those qualified beneficiaries who are Medicare eligible is critical to understand. Medicare Advantage plans or traditional Medicare including Part D plus a Medicare supplement plan is almost always less expensive than COBRA and Medicare Part B premiums. MMA



HEALTH & BENEFITS

3331 W. Big Beaver Road
Suite 200
Troy, MI 48084
248.822.8000 (Phone)
248.822.4131 (Fax)
www.mma-mi.com

125 Ottawa Avenue
Suite 405
Grand Rapids, MI 49503
616.233.1801 (Phone)

PROPERTY & CASUALTY

15415 Middlebelt Road
Livonia, MI 48154
734.525.0927 (Phone)
734.525.0612 (Fax)
www.mma-mi.com

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