

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### DOL updates model COBRA notices

The DOL recently updated its model general COBRA notice and COBRA election notice to include useful information for Medicare-eligible qualified beneficiaries who are offered COBRA after a job loss or other qualifying event. The department also posted an FAQ that discusses the interplay between Medicare and COBRA.

#### Background

The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires plan administrators to provide covered employees and their covered spouses with a general description of COBRA within 90 days of the date their coverage begins. This “general COBRA notice” must satisfy certain content requirements specified by regulation. Plan administrators are also required to furnish covered employees and their covered dependents who lose eligibility due to a qualifying event with a COBRA election notice within timeframes. The COBRA election notice must also satisfy specific content requirements.

To assist plan administrators in satisfying these obligations, the DOL has issued model general COBRA notices and COBRA election notices. The DOL recently posted updated notices on its website. These notices are substantially like the prior notices but add information that could be useful to Medicare-eligible employees and their family members who become eligible for COBRA due to a job loss or other qualifying event. The DOL also posted an [FAQ](#) that discusses the interplay between Medicare and COBRA.

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#### Are plans required to use the model notices?

Plans are not required to use the DOL model notices, but the DOL has stated that those that do will be deemed to comply with the notice content requirements. A plan that does not use the model notices needs to ensure that its notices satisfy the content requirements and that the information is presented in a manner calculated to be understood by the average plan participant. Otherwise, failure to use the model notice could be the basis for legal action.

## Updated COBRA model notices

Both model notices include a new section that provides information about Medicare special enrollment periods and how COBRA coverage coordinates with Medicare. The text in both notices is identical.

### Enrollment in Medicare after a qualifying event

The text explains that individuals who do not enroll in Medicare Part A or B during their Medicare initial enrollment period (i.e., when they first become eligible for Medicare) because they are still employed will have an eight-month special enrollment period to sign up for Medicare Part A or B after they experience a qualifying event. This special enrollment period begins on the earlier of:

- The month after employment ends; or
- The month after group health plan coverage based on current employment ends.

The text also states that individuals who don't enroll in Medicare during the Medicare special enrollment period and instead elect COBRA continuation coverage could have a gap in Medicare coverage and may have to pay a Part B late enrollment penalty.

**Buck comment.** Because individuals who don't enroll during their special enrollment period generally would have to wait until the next Medicare annual enrollment to enroll, they could potentially have a gap in coverage if their COBRA coverage ends before their Medicare coverage becomes effective.

The new text reiterates the general rule that a plan may terminate an individual's COBRA coverage if he or she enrolls in Medicare Part A or B after COBRA is elected. It also clarifies that if Medicare Part A or B is effective on or before the date of the COBRA election, COBRA coverage may not be discontinued due to Medicare entitlement, even if the individual enrolls in the other part of Medicare after the date of the election of COBRA coverage.

#### COBRA timeframes extended

The DOL and Department of Treasury recently issued guidance that extends the timeframes for providing COBRA notices and for making COBRA elections and premium payments. (See our [May 7, 2020 FYI](#).)

### Coordination of benefits

The new language discusses how COBRA coverage coordinates with Medicare when an individual is enrolled in both. It advises individuals that if they have both COBRA and Medicare, Medicare will generally pay benefits first (i.e., be the primary payer) and COBRA continuation coverage will pay second. It also notes that, in some instances, a plan providing COBRA coverage may pay benefits as if it were secondary to Medicare, even if the individual is not enrolled in Medicare.

## In closing

The new text added to the model notices provides valuable information to Medicare-eligible qualified beneficiaries by calling out the disadvantages and perils of enrolling in COBRA coverage instead of (or in addition to) Medicare. Plans that don't currently use the model notices should consider adding the text regarding Medicare to their documents, particularly to the COBRA election notice, which is the one that individuals would likely refer to when making their enrollment decisions. Including this language could help qualified beneficiaries avoid potentially expensive mistakes and also help the plan avoid possible lawsuits.

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