

FAQs ABOUT COBRA MODEL NOTICES

April XX, 2020

Set out below are Frequently Asked Questions (FAQs) regarding implementation of various provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA). These FAQs have been prepared by the Department of Labor (DOL). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs>), these FAQs answer questions from stakeholders to help individuals understand the law and benefit from it, as intended.

Updated COBRA Model Notices

In general, under COBRA, an individual who was covered by a group health plan on the day before the occurrence of a qualifying event (such as a termination of employment or a reduction in hours that causes loss of coverage under the plan) may be able to elect COBRA continuation coverage upon that qualifying event.¹ Individuals with such a right are referred to as qualified beneficiaries.

Under COBRA, group health plans must provide covered employees and their families with certain notices explaining their COBRA rights. A group health plan must provide each covered employee and spouse (if any) with a written notice of COBRA rights “at the time of commencement of coverage” under the plan (general notice). A group health plan must also provide qualified beneficiaries with a notice which describes their rights to COBRA continuation coverage and how to make an election (election notice).

Some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage, such as coverage that is available through the Health Insurance Marketplace (Marketplace). Qualified beneficiaries may be eligible for a premium tax credit (a tax credit to help pay for some or all of the cost of coverage in plans offered through the Marketplace) and cost-sharing reductions (amounts that lower out-of-pocket costs for deductibles, coinsurance, and copayments), and may find that Marketplace coverage is more affordable than COBRA. Qualified beneficiaries may also be eligible for Medicare, or have questions about the interaction between Medicare and COBRA.

The DOL has model notices that plans may use to satisfy the requirement to provide the general notice and election notice under COBRA. DOL is now issuing updated versions of the model general notice and the model election notice to ensure that qualified beneficiaries better understand the interactions between Medicare and COBRA.

Q1: Where can I get a copy of the DOL’s newest model notices?

The model general notice and model election notice are available on the DOL website at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>. The model notices are

¹ For more information on COBRA continuation coverage requirements applicable to group health plans sponsored by private-sector employers, see “An Employer’s Guide to Group Health Continuation Coverage Under COBRA,” available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/an-employers-guide-to-group-health-continuation-coverage-under-cobra.pdf>

available in modifiable, electronic form. As with the earlier model notices, to use the model properly the plan administrator must complete it by filling in the blanks with the appropriate plan information.

DOL will consider use of the model notices available on its website, appropriately completed, to constitute compliance with the notice content requirements of COBRA.²

Q2: I didn't enroll in Medicare when I first became eligible because I was still employed, but I recently lost my job. Can I enroll in Medicare now after my group health plan coverage ends?

Yes, and there may be advantages to enrolling in Medicare before, or instead of, 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 8-month special enrollment period³ to sign up for Medicare Part A or B, beginning on the earlier of

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

If you don't enroll in Medicare and elect COBRA continuation coverage instead, 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 terminate your continuation coverage. However, if Medicare Part A or B is effective on or before the date of the COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even if you enroll in the other part of Medicare after the date of the election of COBRA coverage.

Q3: What health coverage pays first if I'm enrolled in both Medicare and COBRA?

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. Certain plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.

² The Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), administers the COBRA law as it applies to state and local government employers and their group health plans (sometimes referred to as "public sector COBRA"). Use of the model notices is not required for public sector COBRA. However, they may be helpful to state and local government employers and their plan administrators in developing their COBRA rights notices. For more information on public sector COBRA, see CMS's website at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/cobra_fact_sheet.

³ <https://www.medicare.gov/sign-up-change-plans/how-do-i-get-parts-a-b/part-a-part-b-sign-up-periods>.