

Updated Model COBRA Forms Highlight ACA Marketplace Options

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Practices: Employment, Labor & Benefits

On May 7, 2014, the U.S. Department of Labor issued proposed regulations to revise the COBRA Notice requirements to reflect the changes made by the Affordable Care Act ("ACA"). The USDOL also released a new model General Notice of COBRA Continuation Rights ("General Notice") and a new model COBRA Continuation Coverage Election Notice ("Election Notice") that replaces the current model forms. The updated notices, which can be found at <http://www.dol.gov/ebsa/COBRA.html>, provide information about the coverage options available on the Health Insurance "Marketplaces".

The distribution rules have not changed. Under COBRA, employees and their spouses must be given the General Notice within the first 90 days of coverage under an employer-provided group health insurance plan. The updated General Notice provides an instruction page for plan administrators. In addition to informing covered employees and other qualified beneficiaries of their rights to continue their participation in the group health plan after the occurrence of a qualifying event, the General Notice must provide information regarding options available to employees when they lose group health coverage. One of those options is obtaining an individual plan through the Health Insurance Marketplace, which may cost the individual less monthly premiums and out-of-pocket costs.

The COBRA Election Notice, which must be provided to the qualified beneficiaries within 14 days after the plan administrator receives the notice of a qualifying event, has also been updated to provide information about available options. Specifically, recipients of the Election Notice must be informed that "instead of enrolling in COBRA continuation coverage, there may be other more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a 'special enrollment period.' Some of these options may cost less than COBRA continuation coverage."

The updated Election Notice contains information about the coverage available through the Health Insurance Marketplace and the steps that must be taken to obtain such insurance. Individuals have 60 days from the time they lost their job-based coverage to enroll in the Marketplace as a "special enrollment". The Election Notice must also let individuals know that they can elect COBRA coverage and then switch to a Marketplace plan under certain circumstances, but once they sign up for Marketplace coverage, they cannot switch to COBRA.

In addition to notifying individuals about their COBRA rights and options, the Election Notice also provides some guidance in the form of listing factors that should be considered when choosing coverage options. For example, in addition to the cost of premiums, individuals should consider the provider networks available under

the various options, the drug formularies, service areas and other cost-sharing (copayments, deductible amounts, etc.).

Based on the comments submitted during the comment period, the form notices may be revised and the USDOL may provide guidance regarding the use of the forms. Although the regulations are open for comment until July 7, 2014, the USDOL has stated that it will consider the use of the updated model notices to be good faith compliance with the notice requirements of COBRA. Therefore, plan administrators should consider immediately adopting the updated model notices.