



New Model COBRA Notices and clarification on COBRA and Medicare

Prompted by a letter from several House Committees¹, the Department of Labor (DOL) Employee Benefits Security Administration (EBSA) published updates to its model COBRA General Rights² and COBRA Election Notices³ on May 1, 2020 to help these individuals better understand the interactions between COBRA and Medicare. In addition, the EBSA published helpful FAQs⁴ to assist qualified beneficiaries with understanding how COBRA might affect their rights under Medicare.

What has changed

The substantive language that has been provided by DOL EBSA to be added to model notices is as follows:

[Can I enroll in Medicare instead of COBRA continuation coverage after my group health plan coverage ends?](#)

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 initial enrollment period for Medicare Part A or B, you have an 8-month special enrollment period* to sign up, 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 Part B 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 then 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.

If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA will pay second. Certain COBRA continuation coverage plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.

For more information visit <https://www.medicare.gov/medicare-and-you>.

* These rules are different for people with End Stage Renal Disease (ESRD). Please visit <https://www.medicare.gov/sign-up-change-plans/how-do-i-get-parts-a-b/part-a-part-b-sign-up-periods> for more information.

These revisions provide welcome clarification to help Medicare-eligible individuals make important decisions regarding their healthcare coverage.

Background

Generally, employers with 20 or more employees must offer COBRA continuation for their group health plans. Part of this requirement is to furnish adequate written notices providing a general summary of COBRA rights and responsibilities when coverage under group health plan coverage begins (the COBRA General Notice) and a COBRA Election Notice following a loss of that coverage due to a qualifying event (for example, following a termination or reduction of hours of employment).

In 2004, the DOL released notice requirements and model COBRA notices to assist employers with COBRA compliance. In May 2014, these DOL released updated versions of these model notices along

with proposed regulations that allow the DOL to maintain these model notices on its website. In this way, the DOL can maintain and revise the model notices as necessary.

Model COBRA Notices

As with earlier models, in order to use these notices properly, the plan administrator must complete them by filling in the blanks with the appropriate plan information. The DOL will consider use of the model notices available on its website, appropriately completed, to be good faith compliance with the notice content requirements of COBRA.

Use of model notices is not required; these are provided solely for the purpose of facilitating compliance with applicable notice requirements.

COBRA and Medicare

It is crucial that qualified beneficiaries who are also eligible for Medicare better understand the choices available to them when considering their health care coverage options, whether it's electing to continue their employer group health plan through COBRA, enrollment in a Marketplace, or enrolling in Medicare.

The COBRA General Notice, COBRA Election Notice, and EBSA FAQs help explain the interaction between COBRA and Medicare, including Medicare election obligations explaining how COBRA coverage usually pays secondary to Medicare (and that certain plans may pay as if secondary to Medicare, even if Medicare is not elected).

Generally, if a Medicare-eligible individual does not enroll in Medicare Part A or B when first eligible because they are still employed, after the Medicare initial enrollment period, that individual will have an 8-month special enrollment⁵ period to sign up for Medicare Part A or B, beginning on the earlier of (1) the month after their employment ends; or (2) the month after group health plan coverage based on current employment ends.

If a Medicare-eligible individual does not enroll in Medicare and – instead – elects COBRA continuation coverage, they may have to pay a Medicare Part B late enrollment penalty and may have a gap in coverage if that individual decides to elect Medicare Part B later. If COBRA continuation coverage is elected first, that coverage may be terminated early when the qualified beneficiary becomes – after the date of the COBRA election – enrolled in Medicare benefits (in either Part A or B). Conversely, early termination of COBRA continuation coverage because of Medicare coverage may properly occur only if the other coverage becomes effective after the qualified beneficiary elects COBRA. If Medicare Parts A or B is effective on or before the date of COBRA election, the qualified beneficiary will remain entitled to COBRA benefits for the entire COBRA maximum coverage period.

Conclusion

Employers who are using previous EBSA's COBRA model notices, or those who have based their own notice templates on previous EBSA model notices, should work with ERISA counsel to ensure their notices are updated to incorporate this new verbiage.

HealthEquity is currently undergoing updates to our standard COBRA General and Election Notice templates to incorporate these revisions. These updates are targeted to be deployed this month.

The information contained in this memo is not intended to be legal, accounting, or other professional advice. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations.

1. https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/1.21.20_COBRA%20Letter.pdf
2. <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-general-notice.docx>
3. <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-election-notice.docx>
4. <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-model-notices.pdf>
5. <https://www.medicare.gov/sign-up-change-plans/how-do-i-get-parts-a-b/part-a-part-b-sign-up-periods>