



NAVIGATING HEALTHCARE REFORM

May 7, 2014

ACA In The News: COBRA Administration

Recently, the Department of Labor (DOL) and Health and Human Services (HHS) released several pieces of guidance regarding COBRA, which clarify the impact of the ACA's Exchanges.

- On May 2, 2014, the DOL released [proposed regulations](#), which would amend the COBRA notice requirements to reflect changes made by the ACA.
- At the same time, the DOL released updated versions of the [model general notice](#) and [model election notice](#) under COBRA, which reflect that the Exchanges are now open and which better describe special enrollment rights in Exchange coverage.
- The DOL has also provided [Frequently Asked Questions](#) (FAQ) related to the proposed changes to model notices.
- On April 21, 2014, HHS issued an [FAQ](#) clarifying the situations in which a COBRA qualified beneficiary may enroll in a qualified health plan (QHP) through an Exchange and receive subsidies for that QHP coverage.
- On May 2, 2014, HHS also issued a [clarifying bulletin](#) providing an Exchange special enrollment period for COBRA enrollees.

COBRA NOTICES

Under COBRA, group health plans must provide qualified beneficiaries with certain notices explaining their COBRA rights.

- **General Notice:** A group health plan must provide qualified beneficiaries with a general notice of their COBRA rights. The general notice must be provided to qualified beneficiaries within 90 days after initial plan coverage begins.
- **Election Notice:** In certain circumstances, a group health plan must also provide qualified beneficiaries with an election notice, which describes their rights to

continuation coverage and how to make an election. The election notice must be provided to the qualified beneficiaries within 14 days after the plan administrator receives the notice of a qualifying event.

The DOL has provided model notices that plans may use to satisfy the COBRA notice requirements. (The COBRA model election notice was previously revised on May 8, 2013, to inform qualified beneficiaries of other coverage options that would soon become available in the Exchanges.)

Updated Model Notices

According to the DOL, some qualified beneficiaries may want to consider and compare alternatives to COBRA coverage, such as coverage that is available through the Exchanges.

Qualified beneficiaries:

- May be eligible for a subsidy for coverage purchased through an Exchange; and
- May find that Exchange coverage is more affordable than COBRA.

As a result, on May 2, 2014, the DOL released updated versions of the model general notice and model election notice under COBRA. The DOL also issued proposed regulations, which would update existing regulations with respect to the COBRA model notices. The updated model COBRA notices are available in the [COBRA section](#) on the DOL website.

These updates are being made to reflect that the Exchange is now open and to better describe special enrollment rights in Exchange coverage. According to the DOL, the proposed changes would offer information on more affordable options available through the Exchanges, where employees may be eligible for financial assistance that would not otherwise be available for COBRA coverage.

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

Until the proposed regulations are finalized and effective, the DOL will consider use of the model notices available on its website, appropriately completed, to constitute compliance with COBRA's notice content requirements.

Also Updated, CHIPRA Notice

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) permits states to offer eligible low-income children and their families a premium assistance subsidy to help pay for employer-sponsored group health coverage. Under CHIPRA, if an employer's group health plan covers residents in a state that provides a premium subsidy, the employer must send an annual notice about the available assistance to all employees residing in that state (the Employer CHIP Notice).

The DOL has issued a [model notice](#) that employers can use to comply with CHIPRA. On May 2, 2014, the DOL revised this model notice to include similar updates related to Exchange coverage.

EFFECT OF COBRA COVERAGE ON EXCHANGE ENROLLMENT AND SUBSIDY ELIGIBILITY

Under the ACA, individuals may only enroll in a QHP through an Exchange **during one of the following permitted enrollment periods**:

- *The annual open enrollment period* (for 2015, Nov. 15, 2014, through Feb. 15, 2015); or
- *A special enrollment period* (provided under certain limited circumstances, such as marriage or birth of a child).

HHS' FAQ clarifies the situations in which a COBRA qualified beneficiary may enroll in a QHP through an Exchange and receive subsidies for that QHP coverage. In general, individuals who elect COBRA coverage may only enroll through an Exchange:

- During the Exchange's annual open enrollment period; or
- Upon expiration of their COBRA coverage.

During Exchange Open Enrollment

During an Exchange open enrollment period, an individual can voluntarily drop COBRA coverage and get an Exchange plan instead, **even if his or her COBRA coverage has not expired**. In this case, individuals may also be determined eligible for subsidies.

Outside of Exchange Open Enrollment

Outside of Exchange open enrollment, if an individual's **COBRA coverage expires**, he or she would qualify for a **special enrollment period**, and may be eligible for subsidies. However, if the individual **voluntarily drops coverage** outside of Exchange open enrollment (and COBRA has not yet expired), he or she would not qualify for a special enrollment period. This includes individuals who lose COBRA due to nonpayment of premiums. During the next open enrollment period or when the individual's COBRA coverage expires, the individual could enroll in coverage through an Exchange and may be eligible for subsidies.

SPECIAL ENROLLMENT PERIODS FOR INDIVIDUALS ELIGIBLE FOR OR ENROLLED IN COBRA

The ACA provides a special enrollment period through an Exchange to an individual who is eligible for COBRA when he or she:

- Initially is eligible for COBRA due to a loss of other minimum essential coverage; and
- Has exhausted his or her COBRA coverage.

In addition, COBRA beneficiaries may enroll in QHPs in an Exchange during the annual open enrollment period (and if they are determined eligible for any other special enrollment period outside of the open enrollment period).

HHS is concerned that model COBRA notices did not sufficiently address Exchange options for individuals eligible for COBRA and COBRA beneficiaries. These individuals may not have had enough information to understand their enrollment rights through the Exchanges.

As a result, HHS is providing an additional special enrollment period based on exceptional circumstances so that individuals eligible for COBRA and COBRA beneficiaries are able to enroll in QHPs through the federally-facilitated Exchange (FFE). Affected individuals have until **July 1, 2014**, to select QHPs in the FFE.

To receive the special enrollment period, these individuals should contact the Exchange call center at 1-800-318-2596 and state that they are calling about their COBRA benefits and the Exchange. Once determined eligible for the special enrollment period, consumers can then:

- View all plans available to them; and
- Continue the enrollment process over the phone or online.

State-based Exchanges are encouraged, but not required, to adopt similar special enrollment periods.