

US Department of Labor Issues Updated COBRA Model Notices and Related FAQs

The U.S. Department of Labor (DOL) issued revised model general and election notices on Friday, May 1, 2020. The notices can be used by plan administrators to address the notification requirements imposed by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Under COBRA, an individual who was covered by a group health plan on the day before the occurrence of a qualifying event (e.g., termination of employment or reduction in hours that causes a loss in coverage under the group health plan) may elect to continue their coverage under the plan for a period of up to 18 months (subject to extension under particular circumstances). Often, individuals, referred to as "qualified beneficiaries," will elect to continue their existing coverage. However, qualified beneficiaries can also elect continuation coverage through a state or federal health insurance marketplace, or, if eligible, through Medicare.

In its [FAQs About COBRA Model Notices](#) (also issued on May 1, 2020), DOL emphasized that its updated model notices aim to provide qualified beneficiaries with a clear understanding of the connection between COBRA and Medicare. This update highlights the guidance provided by DOL for employers using the updated COBRA model notices and answers to common questions posed by qualified beneficiaries about electing Medicare continuation coverage under COBRA.

Updated COBRA Model Notices

Generally, COBRA requires that group health plan administrators distribute two notices: (1) a general notice (sometimes referred to as an initial notice) at the time an individual becomes eligible for coverage under the plan that describes the individual's right to COBRA continuation coverage on the occurrence of certain qualifying events; and (2) an election notice (sometimes referred to as a qualifying event notice) at the time any such qualifying event occurs that describes the qualified beneficiary's process for electing such coverage. Though use of DOL's model general and election notices is not required, DOL deems that use of its model notices constitutes compliance with COBRA's notice content requirements.

DOL's updated model general notice can be accessed [here](#), while its updated model election notice can be accessed [here](#).

FAQs on Updated COBRA Model Notices

The COVID-19 pandemic has emphasized the importance of COBRA continuation coverage with unprecedented job losses, reductions in working hours, and loss of group health coverage. DOL's FAQs on its updated COBRA model notices provide a meaningful reminder to plan administrators of their notification obligations under COBRA. Perhaps more importantly, DOL's FAQs inform qualified beneficiaries of two key interactions between COBRA and Medicare:

- **Eight-Month Special Enrollment Period:** Individuals who previously became eligible for Medicare, did not enroll due to being employed at that time, and later experience a loss of employment can qualify for an

eight-month special enrollment period to sign up for Medicare Part A or B on the earlier of: (1) the month after their employment ends; or (2) the month after their employer-sponsored group health plan coverage ends. DOL's updated general and election notices emphasize that individuals who elect COBRA coverage over Medicare (despite eligibility) may face a penalty for late enrollment in Medicare Part B and possibly a gap in coverage.

- **Order of Payment for Medicare and COBRA:** For individuals enrolled in both Medicare and COBRA coverage, Medicare will generally pay for expenses first with COBRA coverage paying second. DOL's updated COBRA model notices emphasize that the group health plan providing COBRA continuation coverage can terminate an individual's COBRA continuation coverage if the individual enrolls in Medicare coverage following their COBRA election. The question of which coverage pays first will apply for individuals who became eligible for Medicare coverage before becoming a qualified beneficiary under COBRA, elect COBRA coverage following the occurrence of a qualifying event, and subsequently enroll in Medicare.

Plan administrators who have previously relied on DOL's COBRA model notices should review and implement the updated general and election notices to ensure continued compliance with COBRA's notice content requirements. For any group health plan administered using an alternative notice form, this is also a good time to review the contents of the notice. Further, review of the updated model notices and DOL's FAQs will assist plan administrators in fielding questions from qualified beneficiaries who may consider Medicare enrollment over COBRA continuation coverage. Plan administrators should coordinate with legal counsel to ensure both appropriate implementation of COBRA's notice content requirements and appropriate responses to qualified beneficiaries' questions on the interaction between Medicare and COBRA coverage.

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