

# COMPLIANCE ALERT

## EBSA ISSUES NEW MODEL COBRA NOTICES AND GUIDANCE

May 1, 2020

### QUICK FACTS

- The Employee Benefits Security Administration (EBSA) today issued new model notices that plans may use to provide the required general and election notices under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
- The new model notices contain more detail regarding how COBRA interacts with Medicare.
- The EBSA also released new FAQs to address the interplay between COBRA and Medicare.
- Employers who have developed their own COBRA notices based on the existing EBSA templates should update their notices to incorporate the latest details regarding COBRA and Medicare

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) today issued COBRA guidance to help ensure that qualified beneficiaries better understand the interactions between Medicare and COBRA. Additionally, EBSA released a new set of model notices ([here](#)) that employers can use to meet their duties under COBRA.

### Background

Generally, an individual who was covered by a group health plan on the day before a qualifying event (e.g., termination of employment or a reduction in hours) that causes the individual to lose coverage under the plan may be able to elect COBRA continuation coverage. These individuals are referred to as qualified beneficiaries.

COBRA requires a group health plan to provide each covered employee and spouse with a written notice of COBRA rights at the time of commencement of coverage under the plan – a so-called general notice. A group health plan must also provide qualified beneficiaries with a notice that describes their rights to COBRA continuation coverage and how to elect such coverage – a so-called election notice.

### COBRA and Medicare

A Medicare-eligible individual can elect COBRA coverage, but there are several important considerations stemming from how COBRA and Medicare work together. Additionally, and particularly in light of the economic and workplace effects

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arising out of the COVID-19 pandemic, individuals who are now becoming eligible for COBRA might have a heightened need to consider other coverage such as Marketplace coverage or Medicare as a potentially cheaper option than COBRA continuation coverage.

Several members of Congress recently asked EBSA to clarify information relating to COBRA and Medicare to help Medicare-eligible Americans make key decisions regarding healthcare coverage. Thus, the revised model COBRA notices provide details that address COBRA's interaction with Medicare.

The model notices and FAQs also explain that there may be advantages to enrolling in Medicare before, or instead of, electing COBRA. The EBSA guidance further highlights that if an individual is eligible for both COBRA and Medicare, electing COBRA coverage may impact later Medicare enrollment as well as certain out-of-pocket costs.

In general, if an individual does not enroll in Medicare Part A or B when first eligible because he or she is still employed, after the Medicare initial enrollment period, the individual will have an eight-month special enrollment period 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 an eligible individual does not enroll in Medicare, and elects COBRA continuation coverage instead, he or she may have to pay a Part B late enrollment penalty and may have a gap in coverage if the individual decides to take Part B later. Further, if he or she elects COBRA continuation coverage and later enrolls in Medicare Part A or B before the COBRA continuation coverage ends, the group health plan may terminate his or her continuation coverage. However, if Medicare Part A or B is effective on or before the date of a COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even when a qualified beneficiary enrolls in the other part of Medicare after the date of his or her COBRA election.

Finally, EBSA explains that Medicare typically will pay first (or be the primary payer) and COBRA continuation coverage will pay second (or be the secondary payer) when someone is enrolled in both COBRA continuation coverage and Medicare. Certain plans may pay as if secondary to Medicare, even if the qualified beneficiary is enrolled in Medicare.

## Conclusion

More individuals are experiencing COBRA qualifying events as the COVID-19 outbreak has forced businesses to close or reduce their workforces. Qualified beneficiaries now more than ever may want to consider and compare health coverage alternatives, such as Medicare, to COBRA continuation coverage.

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Employers can help these affected individuals figure out how COBRA might impact their Medicare rights and coverage by disclosing the new information EBSA has released. Employers who have been using the older version of EBSA's standard COBRA notices, or who have based their own versions of COBRA notices on the older EBSA templates, should update their notices to reflect the latest guidance.

## ***EPIC Employee Benefits Compliance Services***

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