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Health Care Reform: COBRA Notices Changed; Special Enrollment Opportunity Created

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Due to some ambiguity in model government language explaining the interplay of the Affordable Care Act with COBRA coverage, the Obama administration has both proposed an update to model COBRA notices and provided a new special enrollment opportunity for COBRA qualified beneficiaries (QBs) to enroll in marketplace coverage.

Last year, the U.S. Department of Labor updated its model COBRA election notice to note that COBRA QBs would have the option of purchasing coverage through a health insurance marketplace rather than electing COBRA. However, that change was only made through a technical release, and older regulatory language still reflected outdated language. Also, the model general notice given to persons who are newly enrolled in an employer plan was not updated at all.

To fix this, on May 2, DOL announced through a notice of proposed rulemaking the general notice will be updated, and the election notice will be revised to clarify that the marketplace is now open and to add more descriptive language, such as the availability of tax credits.

Here are the updated documents: ([model general notice](#)) and ([model election notice](#)). A [notice of proposed rulemaking](#) on the new notice requirements will be published in the May 7 *Federal Register*. Although the notices are just proposed, an employer that uses the notices will be considered in good faith compliance with COBRA's notice rules, according to DOL.

The new election notices also add language noting that COBRA QBs may have a special enrollment opportunity for marketplace coverage. The health care reform law provides that eligibility for, or exhaustion of, COBRA coverage triggers a special enrollment period for marketplace coverage.

Furthermore, COBRA QBs can enroll during the marketplace open enrollment period. However, in a May 1 bulletin, the Centers for Medicare and Medicaid Services indicated that the DOL's model notice may not have been clear enough on the special and open enrollment options. While the DOL notice changes are designed to fix this, CMS determined it was also necessary to add a new special enrollment opportunity, based upon exceptional circumstances, for COBRA QBs to enroll in marketplace coverage. Such individuals have 60 days from the date of the CMS bulletin, or until July 1, 2014, to enroll in marketplace coverage. They are to contact the marketplace call center to process their eligibility for this special enrollment period.

Exchange coverage can be a cheaper option than COBRA coverage for individuals who qualify for subsidies, which are not available for coverage purchased on the open individual market or for COBRA continuation coverage.

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