

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION (PART 32)

June 21, 2016

Set out below is an additional Frequently Asked Question (FAQ) regarding implementation of the Affordable Care Act and the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). This FAQ has been prepared jointly by the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at www.dol.gov/ebsa/healthreform/index.html and www.cms.gov/ccio/resources/fact-sheets-and-faqs/index.html), this FAQ answers a question from stakeholders to help people understand the laws and benefit from them, as intended.

Notice of Coverage Options—COBRA and Health Insurance Marketplace Coverage

The Health Insurance Marketplaces (Marketplaces) are designed to ensure that individuals and small businesses have access to affordable coverage through a competitive private health insurance market. The Marketplaces offer “one-stop shopping” to assist individuals in finding, comparing and enrolling in private health insurance options.

In general, under the COBRA continuation coverage provisions,¹ an individual who was covered by a group health plan on the day before a qualifying event (such as termination of the covered employee’s employment, divorce, or a dependent aging out of a plan, if the event causes a loss of coverage) may be able to elect COBRA continuation coverage upon experiencing a qualifying event.² Individuals with such a right are called qualified beneficiaries. A group health plan must provide qualified beneficiaries with a COBRA election notice that, among other things, describes their rights to COBRA continuation coverage and how to make a COBRA coverage election. In general, the COBRA election notice must be written in a manner “calculated to be understood by the average plan participant.”³

Qualified beneficiaries may want to consider health coverage alternatives that are available through the Marketplaces and compare them to COBRA continuation coverage. Also, some qualified beneficiaries may be eligible for financial assistance, including premium tax credits and

¹ COBRA added parallel provisions under the Employee Retirement Income Security Act (ERISA) (§§ 601 - 608), the Internal Revenue Code (the Code) (§ 4980B), and the Public Health Service Act (PHS Act) (42 U.S.C. §§ 300bb-1 - 300bb-8). DOL has interpretive authority for the notice and disclosure requirements of COBRA, and the Treasury Department is authorized to issue regulations defining the required continuation coverage. The COBRA provisions in the Code, PHS Act, and ERISA are similar, but are not identical in their scope of application. The PHS Act provisions apply only to State and local governmental plans.

² See 26 CFR 54.4980B-2, Q&A 4, for information on which group health plans are excepted from the COBRA continuation provisions under ERISA and the Code.

³ 29 CFR 2590.606-4(b)(4).

cost-sharing reductions.⁴ DOL has a model election notice that plans may use to satisfy the requirement to provide the election notice under COBRA.⁵ On May 8, 2013, DOL published Technical Release 2013-02 that revised the model COBRA notice to include more detailed information to help make qualified beneficiaries aware of other coverage options available in the Marketplaces.⁶ As described in that Technical Release and subsequent guidance,⁷ use of the model election notice, appropriately completed, will be considered by DOL to be good faith compliance with the election notice content requirements of COBRA until further rulemaking is issued and effective.⁸

Q: The COBRA model election notice contains information about enrollment in the Marketplaces. Is it permissible for a group health plan administrator to include additional information about Marketplace coverage in or along with this notice?

Yes. An individual who experiences a qualifying event and therefore becomes eligible for COBRA continuation coverage (for example, a covered dependent who ages out of her parents' health plan or a covered worker who loses his job), also becomes eligible to apply for Marketplace coverage as a result of the same event.⁹ As explained in the COBRA model election notice, for certain qualified beneficiaries, coverage obtained through a Marketplace may be a less expensive healthcare coverage option than enrollment in COBRA continuation coverage.

In Technical Release 2013-02, DOL indicated that the COBRA election notice may be used by plan administrators to assist qualified beneficiaries in understanding their health coverage options upon experiencing a qualifying event, including information regarding enrollment in

⁴ A former employee (including a retiree) or an individual related to a former employee may be eligible for premium assistance even though he or she has an offer of COBRA continuation coverage (regardless of its cost), if the individual is otherwise qualified for premium assistance and does not enroll in the COBRA continuation coverage. However, an active employee who is offered COBRA continuation coverage (for example, because of reduced hours) is ineligible for premium assistance if the coverage is affordable and provides minimum value. For more information on the premium tax credit, see IRS Publication 974.

⁵ For more information on COBRA continuation coverage requirements applicable to private sector group health plans, see "An Employer's Guide to Group Health Continuation Coverage Under COBRA," available at: <http://www.dol.gov/ebsa/publications/cobraemployer.html>. For more information on COBRA continuation coverage requirements applicable to public sector group health plans, see Center for Consumer Information & Insurance Oversight factsheet on COBRA Continuation Coverage, available at: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/cobra_fact_sheet.html.

⁶ Technical Release 2013-02 is available at <https://www.dol.gov/ebsa/newsroom/tr13-02.html>.

⁷ See FAQs about Affordable Care Act Implementation (Part XIX), Q&A-1, available at: <https://www.dol.gov/ebsa/faqs/faq-aca19.html> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html.

⁸ The model election notice is available in modifiable, electronic form on DOL's website at: <http://www.dol.gov/ebsa/cobra.html>.

⁹ Pursuant to PHS Act section 2702(b)(2), as implemented at 45 CFR 147.104(b)(3), a health insurance issuer offering non-grandfathered health insurance coverage in the group or individual market through or outside of the Marketplaces must establish special enrollment periods for qualifying events as defined under section 603 of ERISA. For more information on special enrollment periods, see https://www.dol.gov/ebsa/faqs/faq_compliance_hipaa.html.

Marketplace coverage (including the Marketplace website and phone number). DOL's current model election notice is accessible at: <https://www.dol.gov/ebsa/modelectionnotice.doc>.

In addition, plan administrators may include with the COBRA election notice other information about the Marketplaces, such as: how to obtain assistance with enrollment (including special enrollment), the availability of financial assistance, information about Marketplace websites and contact information, general information regarding particular products offered in the Marketplaces, and other information that may help qualified beneficiaries choose between COBRA and other coverage options. We encourage plan administrators to consider how they can help individuals maintain the coverage that would best suit their needs through these transitions. COBRA election notices may be tailored to particular groups like young adults aging out of dependent coverage on their parents' health plan. In all cases, they are required to be "easily understood by the average plan participant" and, therefore, information should not be too lengthy or difficult to understand.