



legislativeUPDATE

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COBRA: New Notices and Marketplace Coverage Issues

The Obama administration [announced](#) new updates to model COBRA notices intended to better align COBRA's notice requirements with provisions in the Affordable Care Act. The model COBRA notices have been updated to make it clear to employees that if they are eligible for COBRA continuation coverage when leaving a job, they also may choose to instead purchase coverage through the Exchanges (Marketplace). In many cases, individuals eligible for COBRA may find that Marketplace coverage is more affordable than COBRA, as they may be eligible for a premium tax credit (a tax credit to help pay for some or all of the cost of coverage in plans offered through the Marketplace) and/or cost-sharing reductions (amounts that lower out-of-pocket costs for deductibles, coinsurance, and copayments).

Background. Employees and their families who are eligible for employer-sponsored coverage generally must be informed of their right to COBRA at the start of employment, and they must be informed of their right to purchase COBRA coverage when separating from a job. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) also specifies that an employer that maintains a group health plan in a state that provides premium assistance for the purchase of coverage under a group health plan is required to notify each employee of potential opportunities currently available for premium assistance in the state in which the employee resides. The Department of Labor (DOL) has model notices that plans may use to satisfy the requirement to provide the notices under COBRA and under CHIPRA. The COBRA model election notice was revised last year to help make COBRA-eligible individuals aware of other coverage options that would become available in the Marketplace.

The New Model Notices. The DOL has now issued a [proposed regulation](#), as well as updated versions of the model COBRA general notice and model election notice that reflect that the Marketplace is now open and that better describe special enrollment rights in Marketplace coverage. DOL is also issuing a revised CHIPRA notice with similar updates related to Marketplace coverage. The new proposed changes to the model notices offer information on more affordable options available through the Marketplace, where employees and families may be eligible for financial assistance that would not otherwise be available for COBRA coverage. In most cases, employees and their families eligible for, but not yet enrolled in, COBRA would be able to enroll in Marketplace coverage outside of the normal Exchange open enrollment period.

The model notices are available in modifiable, electronic form. As with earlier model notices, in order to use the models properly, the plan administrator must complete them by filling in the

blanks with the appropriate plan information.

- [COBRA model general \(initial\) notice](#)
- [COBRA model election notice](#)
- [Model CHIPRA notice](#)

Spanish versions of the model notices are to be developed as well and will be posted as soon as they are available.

Contemporaneous with the issuance of these notices, the agencies also published Frequently Asked Questions related to the proposed changes to the model notices. The FAQs are posted on a [DOL webpage](#) and an [HHS webpage](#). Use of the model notices is not required. Until the rules are finalized and effective, DOL will consider use of the new model notices, appropriately completed, to constitute compliance with the notice content requirements of COBRA.

COBRA Coverage and Exchange Options. A newly posted [FAQ](#) also clarifies how an individual's COBRA coverage affects his or her eligibility to enroll in Exchange (Marketplace) coverage and receive advanced premium tax credits (APTCs). As background, an Exchange generally must offer individuals an opportunity to enroll during the Exchange annual open enrollment period (OEP) and during special enrollment periods (SEPs) triggered by certain specified events. For example, an individual has a SEP in the Exchange if he or she loses minimum essential coverage (MEC); acquires a new dependent through marriage, birth, adoption, or placement for adoption; or experiences a change in eligibility for APTCs. However, an individual who chooses to drop COBRA coverage during the year (by not paying COBRA premiums) would not be eligible to enroll in Exchange coverage during a SEP (voluntarily dropping COBRA is not considered a loss of MEC).

The FAQ confirms the following:

- During the annual Exchange OEP, a COBRA-covered individual can voluntarily drop his or her COBRA coverage and get an Exchange plan instead, even if COBRA has not yet expired. He or she may also be determined eligible for APTC in this case.
- Outside of the Exchange OEP, if a person's COBRA expires (a loss of MEC), he or she would qualify for a SEP in the Exchange and may be eligible for APTC.
- Outside of the Exchange OEP, if a COBRA covered individual voluntarily drops coverage (and his or her COBRA has not yet expired), the individual would not qualify for a SEP in the Exchange (not a loss of MEC). Enrollment in an Exchange plan would be available and the individual may be eligible for APTC during the next Exchange OEP or when COBRA expires.

Former employees who elect COBRA are not eligible for APTCs during the months in which they are enrolled in COBRA coverage. But under the Exchange rules, a SEP is triggered if an individual becomes newly eligible for APTCs. The FAQ does not address if an individual who voluntarily drops COBRA might still be eligible for a SEP. So, for example, a former employee who voluntarily drops COBRA will no longer be disqualified from APTC eligibility, and—therefore if they are otherwise eligible—they might arguably be entitled to a SEP based on being newly eligible for a APTC.

Special Hardship Exemption. One additional clarifying [bulletin](#) has been posted regarding a limited SEP in the Marketplace for individuals enrolled in or eligible for COBRA coverage. The limited

SEP is intended to address the concern that the prior COBRA model election notices did not adequately address the exchange options for persons under COBRA. Therefore, an additional SEP is being offered based on exceptional circumstances so that persons eligible for COBRA and enrolled in COBRA are able to select an Exchange plan. Affected individuals have until July 1, 2014, to activate the SEP by contacting the Marketplace call center.

Should you have questions regarding these rules, please contact your Conner Strong & Buckelew account representative. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, please visit our online [Resource Center](#).



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