

Special Enrollment Opportunity in the Federal Marketplace for COBRA Beneficiaries

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There has been some confusion surrounding COBRA continuation coverage rules and the Marketplace (also known as the Exchange). The issue is that once an individual elects COBRA continuation coverage, s/he cannot simply drop COBRA and enroll in a plan through the Marketplace outside of an annual enrollment period. The individual may (a) voluntarily drop COBRA but will have to wait until the next open enrollment period, or a special enrollment period, to choose coverage in the Marketplace (typically less expensive); or (b) continue to pay for COBRA until the next available enrollment period in the Marketplace if s/he wants continuous coverage.

To help clarify the rules, the Department of Health and Human Services (HHS) issued guidance that creates a limited special enrollment opportunity for certain COBRA qualified beneficiaries to drop COBRA coverage and enroll, on a prospective basis, in the Federally Facilitated Marketplace (“FFM”).

In general, there are two special enrollment opportunities available in the FFM to an individual eligible for COBRA outside of annual open enrollment:

1. When the individual is first eligible for COBRA due to a loss of group health plan coverage; and
2. Once the entire COBRA continuation of coverage period has been exhausted (end of 18/29/36 months).

HHS is concerned that former model COBRA election notices did not sufficiently address Marketplace options for persons eligible for COBRA and COBRA beneficiaries. Thus, persons eligible for COBRA and COBRA beneficiaries may have had insufficient information to understand when they can enroll in Marketplace coverage. As COBRA coverage may be more expensive than FFM coverage for some individuals, this lack of information may have created a financial hardship.

As a result, HHS is providing an additional special enrollment period so that persons eligible for COBRA and COBRA beneficiaries may elect qualified health plans in the FFM as opposed to COBRA. Affected individuals have a short window (from May 2, 2014 – July 1, 2014) to drop COBRA coverage and enroll in FFM coverage. Individuals interested in pursuing this special enrollment opportunity should contact the Marketplace (1-800-318-2596).

The DOL also revised the COBRA model election and model initial notices to more clearly articulate options in the Marketplace. You can find these updated notices at <http://www.dol.gov/ebsa>.

State Based Marketplaces

It should be noted that this special enrollment opportunity only applies in the FFM. HHS encourages state-based Marketplaces to adopt similar special enrollment periods. However, it is up to each state to determine whether to extend this enrollment window.

Although New York State of Health has not formally announced a similar special enrollment period, it has confirmed that it will allow for a special enrollment window through July 1, 2014 for COBRA beneficiaries. Covered California announced it will use a May 15, 2014 – July 15, 2014 special enrollment window for COBRA beneficiaries. For more information, visit <http://www.coveredca.com/faqs/cobra/#c4>.

At this point, Connecticut has not announced a similar special enrollment period. We will keep you apprised of any further developments.

Severance Arrangements

Some employers have a practice of paying COBRA premiums on behalf of a former employee during a severance period (e.g., the employer pays 6 months of the former employee's COBRA premiums). If the former employee elects COBRA under this type of arrangement, once the employer's payment obligation ends, the individual is responsible for the entire COBRA premium and s/he would not be eligible to enroll in the Marketplace until the earlier of the Marketplace annual enrollment or the exhaustion of COBRA (unless there is a subsequent qualifying life event). Thus, structuring severance in this manner may bind the former employee to more costly COBRA coverage than what s/he could have obtained in the Marketplace had s/ he declined COBRA.

Employers should consider this outcome, along with the potential for discrimination issues, when designing severance arrangements that include payment of COBRA premiums.

For a copy of the HHS bulletin discussing the special enrollment period, visit <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/SEP-and-hardship-FAQ-5-1-2014.pdf>.

