

Health Care Reform Management Alert Series

Model Exchange Notice and COBRA Election Notice Issued



Issue 63

This is the sixty-third issue in our series of alerts for employers on selected topics on health care reform. (Click [here](#) to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

New Model Notices

Beginning January 1, 2014, individuals and employees of small businesses will have access to health coverage through a health insurance market (known as an "Exchange" or "Marketplace") in their state. Open enrollment for the Marketplace begins October 1, 2013. The Affordable Care Act (ACA) requires employers to provide employees with a notice of their coverage options available through the Marketplace ("Exchange" or "Marketplace" Notice). See [Issue 50](#) for earlier information on this Notice.

[✓] Applies to grandfathered plans

[✓] Applies to new health plans

On May 8, 2013, the DOL issued Technical Release 2013-02 (found [here](#)) providing two model Marketplace Notices (one for employers that provide health coverage, and another for employers that do not provide health coverage) and clarifying questions about the Notice requirement, such as when and how to provide the Notice. The Technical Release also includes a revised model COBRA election notice, which now includes information about coverage through the Marketplace.

Exchange or Marketplace Notice

Employers Impacted

The Marketplace Notice must be provided by employers that are subject to the Fair Labor Standards Act (FLSA). In general, the FLSA applies to employers that employ one or more employees who are engaged in, or provide goods for, interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies. The DOL provides an online tool to help employers determine whether they are subject to the FLSA (see [here](#)). If an employer is subject to the FLSA, it must provide a Marketplace Notice regardless whether it is a large employer subject to the play-or-pay mandate or whether it offers grandfathered or non-grandfathered health coverage (or no coverage at all).

Recipients and Content of Notice

The Marketplace Notice must be distributed to all employees, regardless of their enrollment status or their part-time or full-time status. Spouses and dependents are not required to receive a separate Notice. The Marketplace Notice must inform the employee:

- of the existence of the Marketplace, including a description of the services provided by the Marketplace and contact information for the Marketplace;

Seyfarth Shaw — Health Care Reform

- that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace; and
- that if the employee purchases coverage through the Marketplace, the employee may lose any employer contribution to a health plan offered by the employer, and all or a portion of such contribution may be excludible from income for federal income tax purposes.

To satisfy the content requirements, two model Marketplace Notices are now available on the Department of Labor's website: found [here](#). There is one model for employers who do not offer a health plan and another for employers who do offer coverage to some or all employees. The two model Notices are generally the same, but the model for employers that offer health coverage would also describe which of its employees are eligible for coverage, which dependents are eligible for coverage, and whether coverage provides minimum value and is intended to be affordable. It also contains an optional page where the employer can provide information corresponding with the Employer Coverage Tool attached to the "Application for Health Coverage & Help Paying Costs" (for a copy, see [here](#)).

Deadline and Delivery Methods

Employers must provide the Marketplace Notice to their current employees by October 1, 2013. The Notice also must be provided to new-hires on and after October 1, 2013. For new-hires, the Notice will be considered timely in 2014 if it is provided within 14 days of their start date. The Notice may be provided by first class mail, or electronically under the DOL's electronic disclosure safe harbor rules, which generally permit email or other electronic disclosure for employees who have computer access as a regular part of their job functions or consent to electronic disclosure.

Model COBRA Notice

The DOL also revised the model COBRA election notice, noting that individuals eligible for COBRA also may want to consider and compare health coverage available through the Marketplace. The revised COBRA election notice informs qualified beneficiaries that other coverage options are available through the Marketplace, and that being eligible for COBRA does not impact an individual's eligibility for a tax credit through the Marketplace. It also removes the paragraph about preventing a gap in creditable coverage, since plans will not be permitted to impose preexisting condition limitations beginning January 1, 2014. (Plans already are prohibited from applying preexisting condition exclusions on children under age 19.) Please see [Issue 42](#) for a description of this and other changes that will be effective in 2014.

As with the earlier COBRA model notice, use of the revised model, appropriately completed, will be considered by the DOL to be good faith compliance with the election notice requirements of COBRA.

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