Health Plans: What’s Next?
Drinker Biddle’s Health Care Reform Update for Employee Benefit Plans

Changes to COBRA Notices and New Limited Special Enrollment Period

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As employers think about the upcoming employer shared responsibility mandate, they should also be thinking about how the individual mandate and the federally facilitated Marketplace (the “Marketplace”) will affect their employees. As a general rule, individuals may enroll through the Marketplace only during open enrollment or pursuant to a special enrollment period. COBRA eligibility triggers a 60-day special enrollment period through the Marketplace. Additionally, the Department of Health and Human Services (HHS) recently established a limited special enrollment period for current COBRA-eligible individuals permitting them to enroll in Marketplace health plans until July 1, 2014. Concurrent with the announcement of this limited special enrollment period, the Department of Labor (“DOL”) released two new model COBRA continuation coverage notices that more clearly identify general special enrollment rights for COBRA-eligible individuals.

2014 Limited Special Enrollment Period

COBRA permits individuals to continue their employer-sponsored group health plan coverage after certain circumstances occur, like job loss or reduction in hours worked. Regulations under the Affordable Care Act permit COBRA-eligible individuals to enroll for Marketplace coverage when individuals are initially eligible for COBRA and when such individuals exhaust COBRA coverage. However, due to concerns that these enrollment periods were not sufficiently addressed in the model COBRA notices (or similar notices provided by employers), HHS is providing a limited special enrollment period for current COBRA-eligible individuals to enroll in the Marketplace. Anyone currently eligible for COBRA may enroll in the Marketplace until July 1, 2014. This special transition rule allows individuals to voluntarily drop COBRA and enroll for Marketplace coverage. After July 1, the general rule is that voluntarily dropping COBRA coverage (as well as losing COBRA coverage due to a failure to timely pay the required premium) will not trigger a Marketplace special enrollment right.

Drinker Biddle Note: The new transition rule applies to federally facilitated Marketplaces, although HHS is encouraging state-run Marketplaces to adopt a similar rule.

Employers are not required to inform COBRA-eligible individuals of the limited special enrollment period. However, employers may want to consider providing notice to affected individuals. It is unlikely an individual will become aware of the opportunity to enroll in the Marketplace through this limited special enrollment period unless an employer informs them of the right. COBRA participants may be able to get medical coverage through the Marketplace that costs less than COBRA continuation, or they may qualify for tax credits or premium subsidies that will help lower their out-of-pocket costs. In addition, providing such notice may benefit employers to the extent individuals take advantage of the opportunity to drop COBRA coverage and enroll in a health plan through the Marketplace.
**Drinker Biddle Note:** Plan sponsors and administrators should take care when preparing communications about the COBRA special enrollment period to address aspects unique to their plan. For example, communications should address the impact on dental and vision continuation coverage if medical continuation coverage is dropped. Similarly, if the employer subsidizes the participant’s share of the COBRA premium (e.g., during a severance period), the loss of the COBRA premium subsidy does not trigger a Marketplace special enrollment right and affected participants should be made aware of this.

**Amended Model Notices**

HHS established the limited special enrollment period discussed in this alert in part because the DOL’s model COBRA notices did not sufficiently address an affected individual’s right to enroll in the Marketplace. To correct this issue, the DOL recently released two new model notices, a general notice and an election notice, that more clearly describe Marketplace enrollment options in the COBRA context. The general notice, which must be provided to newly eligible participants and describes the general COBRA continuation coverage rights, now includes information regarding an individual’s right to enroll in the Marketplace instead of electing COBRA. The election notice, which must be provided when COBRA rights are triggered, now includes a description of the Marketplace, when an individual can enroll for Marketplace coverage, and how to obtain more information regarding the Marketplace.

There is no specific date the two new model notices become effective. However, we recommend employers update their COBRA notices sooner rather than later to avoid complaints by individuals who miss the Marketplace enrollment period when they become eligible for COBRA. Such information may also encourage COBRA-eligible individuals to elect Marketplace coverage in lieu of COBRA coverage. In updating such notices, we note that the models should be used only as a starting point and that plan-specific as well as employer-protective language should be added to the notice. For example, it is generally advisable to note that COBRA for a health flexible spending account is only for the plan year of the qualifying event. Similarly, it would be helpful to remind COBRA participants that any grace period for premium payments is required by law so that no additional grace period will be provided.
Employee Benefits & Executive Compensation Practice Group

We intend to provide updates on this topic periodically. In the meantime, should you have any questions, please contact a member of the Drinker Biddle Employee Benefits & Executive Compensation Practice Group or your regular Drinker Biddle attorney.

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