

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

January 21, 2020

The Honorable Alex Azar II
Secretary
U.S. Department of Health and Human Services (HHS)
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor (DOL)
200 Constitution Ave NW
Washington, DC 20210

RE: Interaction between COBRA Benefits and Medicare Eligibility and Enrollment

Dear Secretary Azar and Secretary Scalia:

We write regarding challenges facing workers and retirees that can result in needless penalties and unnecessary out-of-pocket expenses. For Americans who receive coverage under a group health plan subject to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the transition to coverage under COBRA accompanied by eligibility for Medicare can be confusing and ultimately costly. We encourage the Department of Health and Human Services (HHS) and the Department of Labor (DOL) immediately to begin collaborating on solutions to mitigate the financial risks facing Americans who are eligible for coverage under Medicare.

As you know, COBRA grants temporary continuation of coverage to those enrolled in group health plans when coverage would otherwise end upon the occurrence of a qualifying event (e.g., termination of employment other than by reason of gross misconduct). For Americans who are also Medicare-*enrolled* when coverage begins under COBRA, Medicare is the primary payer and plans subject to COBRA become secondary.

For qualified beneficiaries who become Medicare-*eligible* but have yet to enroll in either Part A or Part B, group health plans can reevaluate any paid claims. Most often, individuals are not aware of their Medicare eligibility or the need to enroll in the program, even if one is still employed. As a result, many retirees are unexpectedly exposed to out-of-pocket liability for any costs paid under COBRA benefits on or after date of Medicare eligibility and penalties for late enrollment in Medicare. Some of this risk would be eliminated if COBRA notices addressed the interaction with Medicare, and vice versa. Unfortunately, such information is not required under either Medicare or COBRA, and thus, transparency and clear information about the interaction between the two is lacking.

In light of the high out-of-pocket costs that can result for Medicare-eligible COBRA beneficiaries, we ask you to develop a strategy to address this issue effectively. Medicare enrollment and penalties, secondary payment rules, and COBRA are complicated concepts – the convergence of these issues require increased effort from HHS and DOL to coordinate and develop informative and clear communications for affected Americans.

If COBRA and Medicare notices address the programs' interactions, including the potential for financial liability, the number of Americans who are unaware of the steps they should take to avoid late enrollment penalties, delayed benefits, and unexpected out-of-pocket costs would be reduced.

Therefore, we request the following information and data:

1. Data that reflect any identifiable overlap between Medicare-eligible individuals and COBRA beneficiaries, particularly any information on the number of potentially affected Americans, or if such data do not exist, a description of barriers to the ability of HHS and/or DOL to produce such data and what is being done to overcome them;
2. Existing legal and administrative authorities available to HHS and/or DOL to address the information gap and steps that may be taken under this legal authority, including updates to the public-facing websites of both HHS and DOL describing Medicare eligibility and enrollment and COBRA benefits; and
3. Any statutory language or other barriers that may prevent HHS or DOL from taking immediate steps to improve the information available to affected individuals.

Please provide the requested information and data by January 31, 2020.

If you have any questions, please contact the Majority Staff, Sarah Levin at (202) 225-3625, Daniel Foster at (202) 225-3725, or Samantha Satchell at (202) 225-2927; or the Minority Staff, Alyene Mlinar at (202) 225-4021, Alexis Murray at (202) 225-4527, or James Paluskiewicz at (202) 225-3641.

Thank you for your immediate attention to this matter.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and
Means

Frank Pallone, Jr.
Chairman
Committee on Energy and
Commerce



Robert C. "Bobby" Scott
Chairman
Committee on Education and
Labor



Kevin Brady
Ranking Member
Committee on Ways and
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Greg Walden
Ranking Member
Committee on Energy and
Commerce



Virginia Foxx
Ranking Member
Committee on Education and
Labor

Cc:

Assistant Secretary Preston Rutledge
Employee Benefits Services Administration

Administrator Seema Verma
Centers for Medicare and Medicaid Services

Commissioner Andrew Saul
Social Security Administration