



February 15, 2024

Chlora Lindley-Myers
President
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001

Dear President Lindley-Myers:

Thank you for your letter to Acting Secretary Julie A. Su providing your perspective on issues related to the coordination of coverage provided by Medicare with coverage provided by group health plans under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Your letter was forwarded to me for response, as Assistant Secretary of the Employee Benefits Security Administration (EBSA).

We appreciate hearing from you on this important issue. Input from our partners and stakeholders is important as we continue to evaluate ways to inform and support the workers, retirees, and families who are navigating these systems.

You described situations in which group health plans providing COBRA coverage seek to recoup or limit benefits provided to individuals over age 65 on the basis that:

- the benefits are also covered by Medicare Part B or D, and
- the health plan providing COBRA coverage has determined that Medicare coverage is primary for individuals who are eligible for Medicare, even though they have not yet enrolled in Part B or D.

Your letter requests clarification that COBRA continuation coverage under group health plans may not limit benefits due to an individual's entitlement to Medicare when they are not enrolled in Part B or D.

While some of the issues raised in your letter are addressed in the Department of Labor's model COBRA notices, these issues seem to relate more directly to requirements outside of our interpretive jurisdiction. We have shared your letter with our colleagues at the Department of Health and Human Services and the Department of the Treasury, so they can consider the recommendations provided in your letter.

Thank you again for your letter and for taking time to share your recommendations.

Sincerely,

Lisa M. Gomez
Assistant Secretary