

June 2003

Time to Review COBRA Notices for New Regs

The Department of Labor ("DOL") released proposed regulations (the "Regulations") on May 28, 2003 regarding the timing and content of the notice requirements which the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") imposes on plan administrators of group health plans ("GHPs"), employers, and GHP participants.

Background - COBRA Coverage

Under COBRA, employees and any dependents benefiting under a GHP ("qualified beneficiaries" or "QBs") have the right to continue health plan coverage for 18, 29, or 36 months, depending on the event, when coverage is lost as a result of specified qualifying events (described below).

Initial COBRA Notice

The Regulations provide plan administrators with a new deadline to provide the initial written notice to covered employees and spouses of their right to continue COBRA coverage. Notice must be provided within **90 days** from the date an employee and/or dependent first becomes covered under the GHP. This notice may be included in the GHP's summary plan description ("SPD") if the SPD meets the 90-day deadline.

The initial notice must contain specified information, some of which includes:

- ◆ The plan name and the plan administrator's name, address and phone number
- ◆ An explanation of who may become a QB
- ◆ A list of qualifying events
- ◆ A statement advising the covered employee and spouse to inform the plan administrator of any address changes
- ◆ A statement that additional information regarding COBRA continuation coverage and other rights under the plan is available from the plan administrator.

The Regulations contain a new model initial COBRA notice. While use of the model notice is not required, plan administrators who do use it (appropriately tailored to reflect plan provisions) will be deemed to satisfy the notice content requirements. Use of the former model notice released with DOL Technical Release 86-2 is no longer acceptable.

Notice Requirement for Employers

An employer must notify the plan administrator of certain qualifying events so that the plan administrator may provide a COBRA election notice (described below). Generally, such notice must be given within **30 days** of the following qualifying events (or loss of coverage, if later, if the plan document so provides):

- ◆ An employee's death, termination, reduction in hours or entitlement to Medicare
- ◆ The employer's commencement of bankruptcy proceedings.

Notice Requirement for QBs

A QB must notify the plan administrator of certain qualifying events so that the plan administrator may provide a COBRA election notice. The QB's notice must be provided within

- ◆ **60 days** of:
 - ◆ a divorce, legal separation, or loss of child dependent status (or loss of coverage, if the plan so provides)
 - ◆ second qualifying event (*i.e.*, divorce, legal separation, loss of child dependent status, or death) occurring during a QB's 18- or 29-month COBRA continuation period
 - ◆ a determination from the Social Security Administration ("SSA") that a QB is disabled during the first 60 days of COBRA continuation coverage
- ◆ **30 days** of a determination from the SSA that a QB is no longer disabled.

A GHP must establish reasonable procedures for notifying the plan administrator. Failure to provide specific procedures may result in notice being inferred from other sources (e.g. notice to a supervisor could be deemed notice to the GHP). GHPs may impose consequences for failing to follow its reasonable procedures.

COBRA Election Notice

The plan administrator must provide each QB with written notice of the right to elect COBRA continuation coverage, although one notice may be provided to a covered employee and spouse residing at the same address. Generally, such notice must be provided by the plan administrator within 14 days after it receives notice that a qualified event occurred. However, if the employer is also the plan administrator, the Regulations now make it clear that notice must be provided within 44 days after the qualifying event occurs (or 44 days after the related loss of coverage, if the plan provides for later loss of coverage).

The Regulations require that the election notice contain 15 specific provisions, including:

- ◆ The plan name and the plan administrator's name, address and phone number
- ◆ Identification of the qualifying event
- ◆ The name of each QB who is entitled to continue coverage
- ◆ A statement that each QB has a separate right to continue coverage
- ◆ An explanation of the procedures to elect continuation coverage.

As with the initial COBRA notice, the Regulations contain a new model election notice that a plan administrator may use to meet the notice content requirements and the former model election notice is no longer acceptable.

Termination of Continuation Notice - New

Under the proposed regulations, the plan administrator must provide a new written notice to QBs whose COBRA continuation coverage is terminating before their 18-, 29-, or 36-month period ends. The notice must be provided as soon as practicable after the plan administrator determines coverage is ending and must contain:

- ◆ The reason coverage is terminating early (e.g., non-payment of premiums)
- ◆ The date coverage is terminating
- ◆ Any other rights the QB may have regarding coverage (e.g., a conversion right).

Required Action

The DOL intends that the Regulations will be finalized and effective January 1, 2004 for calendar year plans. However, the DOL has indicated that, effective with the publication of the Regulations, use of the model notice in Technical Release 86-2 is no longer acceptable. Therefore, GHP sponsors should currently take steps to ensure that their COBRA notices and related procedures are in compliance with the Regulations.

If you have any questions about the new COBRA notice requirements, please contact the Seyfarth Shaw employee benefits group attorney with whom you work or any employee benefits attorney listed on the website at www.seyfarth.com.

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