

COBRA alert: Time to get your forms and procedures in shape



Employee Benefits and Labor & Employment Practice Groups

As we reported in *Employee Benefits Developments*, May 17, 2004 to May 28, 2004, the Department of Labor published a set of final rules that require group health plan sponsors and administrators to review and update their COBRA administrative forms and procedures. The new rules are effective for plan years beginning on or after November 26, 2004.

With the effective date fast approaching, there are a number of action items we are recommending to group health plan sponsors and administrators. Whether your company administers COBRA itself or retains the services of a COBRA service provider, you will need to be certain that your company's COBRA forms and procedures are updated. If you would like assistance in updating your company's COBRA documents, please contact any member of the Employee Benefits or Labor & Employment Practice Groups.

Background

General Notice Rules

The final rules prescribe time frames for delivering the general COBRA notice to new plan participants and describe the specific information that the general notice must contain. Generally, the notice must be furnished to each covered employee and to the employee's spouse (if covered under the plan) not later than the earlier of:

- ▶ either 90 days from the date on which the covered employee or spouse first becomes covered under the plan or, if later, the date on which the plan first becomes subject to the continuation coverage requirements; or
- ▶ the date on which the administrator is required to furnish an election notice to the employee or to his or her spouse or dependent.

The final rules also prescribe content requirements for the general COBRA notice, including basic information regarding COBRA and the rights and responsibilities of qualified beneficiaries that a participant or beneficiary would need to know before the occurrence of a qualifying event to be able to protect his or her COBRA rights.

With respect to the delivery of the COBRA general notice, the final rules specifically allow for delivery of a single notice

addressed to a covered employee and the covered employee's spouse at their joint residence, as long as the plan's latest information indicates that both reside at that address. It must also allow the plan to satisfy the general notice requirement by including the general notice information in the SPD of the plan and providing the SPD at a time that complies with the timing requirements for the general notice.

Action Items

- ▶ Update the general COBRA notice given to new plan participants to satisfy the notice content requirements. The final rules include a new model initial notice.
- ▶ Update general COBRA notice procedures to generally require delivery of the notice within 90 days of the date coverage begins.
- ▶ Develop reasonable procedures for administering qualifying event notices from qualified beneficiaries (e.g., notice of a divorce or cessation of dependent child status), and incorporate those procedures in the plan's SPD.
- ▶ Update the qualifying event/election notice given by the plan administrator to a qualified beneficiary to satisfy new notice content requirements. The final rules include a model qualifying event/election notice.
- ▶ Develop a COBRA denial notice and develop procedures for delivering the notice following the plan administrator's determination that an individual is not entitled to COBRA coverage.
- ▶ Develop a COBRA early termination notice, and develop procedures as soon as practicable following the plan administrator's determination that COBRA coverage will end before the end of the maximum COBRA coverage period.
- ▶ Review group health plan documents and SPDs, and confirm the plan documentation does not contain statements inconsistent with the new DOL rules.

Employer's Notice of Qualifying Event

An employer must notify the plan administrator of a qualifying event no later than 30 days after the date of the qualifying event. However, if your plan provides for COBRA continuation coverage to begin with the date of loss of coverage, the 30-day period for providing the notice of qualifying event also must begin with the date of loss of coverage, rather than the date of the qualifying event. The final rules require that an employer provide the plan administrator sufficient information to enable the administrator to determine the identity of the plan, the covered employee, the qualifying event, and the date of the qualifying event.

Qualified Beneficiaries' Notices

The final rules describe the notices that covered employees and qualified beneficiaries may be required to provide to the administrator, which include notices of certain qualifying events (divorce, legal separation, or a child's ceasing to be a dependent under the plan), notices of second qualifying event, notices of a determination of disability by the Social Security Administration, and notices of a determination by the Social Security Administration that a qualified beneficiary is no longer disabled. Plans must establish reasonable procedures for the furnishing of these notices.

The final rules set general standards for what will be considered reasonable. A plan's procedures generally will be considered reasonable if they are described in the plan's SPD, specify who is designated to receive notices, and specify the means qualified beneficiaries must use for giving notice and the required content of the notice. Plans may require qualified beneficiaries to provide specific information via a specific form, if the form is easily available to qualified beneficiaries without cost.

In general, a plan must allow an employee or qualified beneficiary at least 60 days to provide notice of a qualifying event that is divorce, legal separation, a child's ceasing to be a dependent under the plan, or a second qualifying event. The 60-day period begins to run from the latest of:

- ▶ the date of the qualifying event;
- ▶ the date on which there is a loss of coverage; or
- ▶ the date on which the qualified beneficiary is informed, through the plan's SPD or the general COBRA notice, of his or her obligation to provide notice and the procedures for providing that notice.

A plan may not reject an incomplete notice as untimely if the notice is provided within the plan's time limits and contains

enough information to enable the plan administrator to identify the plan, the covered employee and qualified beneficiaries, the qualifying event or disability determination, and the date on which that event or determination occurred. However, if a timely notice fails to supply all of the information required under the plan's procedures, the plan administrator may require qualified beneficiaries to supply the missing information.

Plan Administrator's Notice Obligations

In general, the final rules describe timing and content requirements for COBRA election notices, require administrators to notify individuals under certain circumstances if continuation coverage is determined not to be available, and require plan administrators to provide notice when continuation coverage terminates before the end of the maximum period for such coverage. The final rules generally provide that the administrator must furnish an election notice to qualified beneficiaries within 14 days after the receipt of notice of a qualifying event. In connection with qualifying events for which the employer must provide a qualifying event notice to the plan administrator, there is a special timing rule where the employer is also the administrator of the plan. Under the special rule, an election notice must be furnished not later than 44 days after the date of the qualifying event, or, if the plan provides that COBRA coverage starts on the date of loss of coverage, the date the qualified beneficiary loses coverage under the plan. The final rules prescribe the content requirements for the COBRA election notice, and include a model election notice.

The final rules retain the requirement that a COBRA denial notice be provided if continuation coverage is determined not to be available, as well as the COBRA early termination notice requirement. The administrator generally must furnish a COBRA denial notice to qualified beneficiaries within 14 days after the receipt of notice of a qualifying event, and a COBRA early termination notice "as soon as practicable" after a decision is made to terminate COBRA coverage.

This client alert is a publication of Hodgson Russ LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.



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