

FINAL REGULATIONS ISSUED FOR NOTICE REQUIREMENTS UNDER COBRA

Last May, the Department of Labor's Employee Benefits Security Administration issued long-awaited final regulations under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA"). The new regulations revise the notice requirements applicable to plan administrators, employers and employees that are considered "qualifying beneficiaries" under COBRA. For plans which operate on a calendar year basis, the revised notice requirements took effect on January 1, 2005.

BACKGROUND

The COBRA provisions generally require that any "group health plan" offer qualified beneficiaries the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Such events are referred to as "qualifying events." Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage.

The final regulations consist of four separate sections, each of which describes changes applicable to the following notices required to be given by employer, employee and plan administrator: (i) general notice, which must be delivered to all plan participants by either the employer or the plan administrator; (ii) notice of qualifying events that must be provided by the employer to the plan administrator; (iii) notice of qualifying events that must be provided by the employee to the plan administrator; and (iv) election notice and other notices that the plan administrator must provide to qualified beneficiaries before and after election of continuation coverage. Each of these notice requirements is described in detail below.

THE GENERAL NOTICE

A group health plan must provide written notice of COBRA rights to each covered employee and spouse (if any) at the time of commencement of coverage under the plan. This general notice must be provided within 90 days of commencement of coverage under the plan, and may be sent to the participant's address only if the participant's spouse also resides at the participant's address (if not, the spouse must be sent the general notice under a separate mailing). The general notice can accompany or be included in the plan's

Summary Plan Description. The general notice must set forth the 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 in order to protect his or her COBRA rights. This general notice is intended to be simple and straightforward so as to avoid confusion by plan participants. It must contain some plan-specific identification information, including the name, address and phone number of a party or parties who will provide information about the plan and COBRA upon request. The regulations contain a model general notice that plan administrators and employers may adopt to ensure compliance with the new COBRA notice requirements.

EMPLOYER'S NOTICE OF QUALIFYING EVENT TO THE PLAN ADMINISTRATOR

An employer must provide notice to the plan administrator of certain instances in which an employee or other beneficiary loses coverage under the plan. An employer must provide notice to the plan administrator when one of the following "qualifying events" occurs: the employee's termination of employment or reduction in hours of employment (resulting in loss of coverage), the employee's death, the employee's becoming entitled to Medicare, or the commencement of a proceeding in bankruptcy with respect to the employer. This notice must be made no later than 30 days after the date of the qualifying event (or, in some instances, within 30 days of the loss of coverage). This notification must contain sufficient information to allow the administrator to determine the identity of the plan, the covered employee, the qualifying event, and the date of the qualifying event.

QUALIFIED BENEFICIARIES' NOTICE OF QUALIFYING EVENT TO THE PLAN ADMINISTRATOR

Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of a qualifying event that is either the divorce or legal separation of the employee from his or her spouse, or a child becoming no longer eligible to be covered as a dependent under the plan. Furthermore, each covered employee or qualified beneficiary

is responsible for notifying the plan administrator of the occurrence of a second qualifying event (which would extend COBRA coverage), a determination of disability by the Social Security Administration, and a determination by the Social Security Administration that a qualified beneficiary is no longer disabled. The plan may specify reasonable notice requirements that a beneficiary must follow. For example, the plan may require that this notice be delivered in writing or on a specific form and may dictate other requirements due on notification (e.g., a copy of a divorce certificate). If no requirement regarding notice is set forth in the general notice, a qualifying beneficiary may give oral or written notice so long as such notice is reasonably calculated to bring information of the qualifying event to the plan administrator. The plan must allow a participant a minimum of 60 days in which to give notice to the plan administrator of the qualifying event. This 60-day period runs from the latest of (i) the date of the qualifying event, (ii) the date on which there is a loss of a coverage, or (iii) the date on which the participant received the general notice of his or her obligation to provide notice and the procedures for providing such notice.

PLAN ADMINISTRATOR'S NOTICE OBLIGATIONS; THE ELECTION NOTICE

The Election Notice A plan administrator must notify each qualified beneficiary who is entitled to elect continuation coverage of his or her COBRA rights. This notice must be made within 14 days after the plan administrator is notified of a qualifying event. This notice must provide qualified beneficiaries with information about their right to elect continuation coverage under the plan. Where the qualifying event is one for which the employer must notify the plan administrator, this notice may be made within 44 days of the qualifying event if the employer is the plan administrator (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 election notice must contain specific information regarding the plan participant's coverage under the plan prior to the qualifying events to ensure that plan participants have access to information about individual coverage under the plan (i.e., which beneficiaries may elect continuation coverage). In addition, the election notice must contain general information similar to the information contained in the general notice (discussed in Part I above) so that plan participants have all available information in one packet. The regulations contain a model election notice that plan administrators and employers may adopt to ensure compliance with the new COBRA notice requirements.

The "Unavailability Notice" If the plan administrator receives information regarding a qualifying event from an individual who is not eligible to elect COBRA continuation coverage, the plan administrator must provide notice to the individual explaining why he or she is not entitled to such coverage. This "unavailability notice" must be provided within 14 days of the plan administrator's receipt of the notice from the individual of the qualifying event.

Notice of Early Termination Plan administrators must provide notice of early termination of COBRA coverage. For example, if the qualified beneficiary does not pay a required premium in full or on time, or if the qualified beneficiary becomes covered under another group health plan, notice must be given. This notice may be combined with the notice of the certificate of creditable coverage required under HIPAA.