

Summary of the Department of Labor Final COBRA Notice Regulations Issued May 26, 2004

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On May 26th the Department of Labor released the Final COBRA Notice Regulations ("The Rules"). While the new rules are consistent with many current COBRA practices, there are a number of significant changes. Even employers who utilize the services of a COBRA administrator need to understand the new rules and may need to implement internal changes to comply.

The Rules contain specific content requirements for both the General Notice and Election Notice, all employers will need to update their current notices. The Rules also require two new COBRA notices; a termination notice and an unavailability of coverage notice. Finally the Rules require employers to adopt "reasonable procedures" for certain events which require employees and beneficiaries to notify the employer.

The following summary describes some of the most important issues contained in the new Regulations. For more information including white papers, copies of the regulations, and more, go to www.KnowCOBRA.com.

Effective Date

Plans subject to COBRA must comply with the Final Regulations on the first plan year on or after November 26th, 2004.

General COBRA Notice

The regulations formalize many procedures common to the current way employers handle the General COBRA Notice, but add new timing rules and content requirements.

- The General Notice must be sent within 90 days of coverage
- An employer can fulfill the notice obligation if the notice is included in the plans SPD, as long as the SPD is distributed in a way that meet The Rules requirements
- The General Notice must be sent to both the employee and spouse (if covered)
- One notice to the home is allowed if both employee and spouse live at the same address, but it must be addressed to both the employee and spouse
- The Rules contain specific content requirements, and the DOL has published a model notice

The General Notice is required to contain a statement that additional information is available in the plan's SPD. This will create problems for employers who do not have complete SPDs for plans subject to COBRA.

Employer Notice to Administrator of Certain Events

The final rules formalize the requirement that the employer must notify the administrator within 30 days of Termination/Reduction in Hours, Employees Death, Employees Medicare Entitlement, or Bankruptcy event.

Qualified Beneficiaries Notice to the Employer

COBRA requires a Qualified Beneficiary (QB) to notify the employer of certain events. These events include divorce and legal separation, dependent ineligibility, second qualifying events, and qualification for Social Security Disability benefits. The final rules require an employee or qualified beneficiary to notify the employer or administrator within 60 days of the event. The 60 day requirement for employee notice of a second event is new, and should help employers deal more efficiently with multiple COBRA event situations.

The DOL regulations contain a new rule that requires an employer to establish "reasonable procedures" for the furnishing of these notices. The rules state that the procedures 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."

An advantage of this rule is that the employer can require employees and beneficiaries to follow certain procedures and even use forms designated by the employer, however, if an employer does not create reasonable procedures, an employee's verbal notice to certain representatives may be considered sufficient.

The Election Notice

Many of the provisions regarding the Election Notice conform to common current practices including a rule that the Election Notice must be provided to all covered beneficiaries. One notice is sufficient to notify all beneficiaries living at the same address.

Normally an Election Notice should be sent within 14 days of the event date or the loss of coverage date. The final rule, however, contains an interesting twist in the timing of the Election Notice. The DOL formalizes the long standing practice that if when the employer is also the administrator of the plan, the notice must be sent within 44 days of the event, but in the Final Rules this 44 day period only applies to Termination, Reduction in Hours, Death of Employee and Bankruptcy events.

In case of Divorce, Legal Separation and Dependent Ineligibility the Election Notice must be sent within 14 days of the employer or administrator receiving notice of the event from the employee of beneficiary.

The Final Regulations contain significant new Election Notice content requirements. The DOL has published a Model Election Notice for guidance, but the Model is almost 7 pages long without plan specific information included. The new Election Notice content requirements are bound to raise many questions among potential COBRA beneficiaries. It will be a challenge for employers and administrators to edit the Model Notice to make it more usable while still including all the required elements.

Two New Notice Requirements

Undoubtedly the most significant changes in the Final Regulations are requirements for two new notices, The Termination Notice and The Unavailability Notice.

The Termination Notice

The DOL now requires employers to send a termination of COBRA Notice to any qualified beneficiary who's COBRA terminates before the maximum COBRA coverage period. No specific timing is given for the notice. The rule simply states that it must be sent "as soon as is practicable". In the preamble, the DOL assumes that many employers will combine this notice with HIPAA certificates that are already required when an individual loses coverage. This will be effective when the same entity is responsible for both COBRA and HIPAA certificates. However, for many employers, different organizations handle COBRA and HIPAA. These employers will need to send separate notices or change procedures.

The Unavailability Notice

The biggest change required by the Final Rules occurs in the case of a divorce, legal separation, loss of dependent status, the employee's entitlement to Medicare, or a second qualifying event. If an employee or beneficiary notifies the employer of one of these events, and the individual is not eligible for COBRA coverage, the employer is now required to provide a notice within 14 days that describes the employer's reason for denying the coverage.

The DOL give examples of a number of situations where this notice would apply including "when a plan administrator denies coverage because it has been determined that no qualifying event has occurred or because the qualified beneficiary did not furnish the notice of qualifying event in a timely manner or did not provide complete information". The ability of an employer to deny coverage in these situations will be effected by the employer procedures that the Rules require as described above.

Employer Guide

KnowCOBRA.com has released its' "*Employers Guide to the DOL COBRA Notice Regulations*". The guide contains 4 model notices and sample employer procedures and is available in MS Word format for easy editing of forms. Single employer versions are only \$99. Agent, brokers and health plans can license the guide for distribution to clients for as little as a few dollars per employer. For more information, or to purchase, go to www.KnowCOBRA.com or call 612-581-6281.



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