

## In This Issue

*In this eighth issue of the McGraw Wentworth Benefit Advisor for 2003, we will discuss the newly issued proposed COBRA regulations. These regulations do not drastically change the COBRA provisions organizations currently administer but they do provide clarification of the content and timing requirements for notices. Your organization should review current notices and procedures to insure compliance with the new proposed requirements.*

*We welcome your comments and suggestions regarding this issue of our technical bulletin. For more information on this Benefit Advisor, please contact your Account Manager or visit the McGraw Wentworth web site at [www.mcgraw-wentworth.com](http://www.mcgraw-wentworth.com).*

## “A New ‘Coil’ in COBRA”

In the May 27, 2003, edition of the *Federal Register*, the Department of Labor (DOL) released proposed COBRA regulations. The new regulations make minor changes to some of the administrative requirements of COBRA and focus primarily on the notice delivery and content requirements.

### Summary of the Proposed Regulations

Following is a summary of the key issues addressed by the new proposed regulations. The proposed regulations:

- Provide new model language for both the Initial Notice of COBRA Rights (called the General Notice in the proposed regulations) and a COBRA Election Notice.
- Discuss when and how to deliver the General Notice.
- Create two new notice requirements:
  - **Ineligible for COBRA:** If an employee or a family member notifies the plan administrator of a qualifying event and any individual in the family is not eligible for COBRA, the plan administrator must explain in

writing why COBRA is not available.

- **Early Termination of COBRA Coverage:** If a plan administrator terminates COBRA before the maximum coverage period ends, the plan administrator must notify the qualified beneficiary that COBRA has been terminated.



The DOL was concerned that many plan administrators were not communicating effectively with their COBRA continuants and qualified beneficiaries. Primarily, the proposed regulations encourage clear, understandable communication between qualified beneficiaries and the plan.

### Discussion of the Key Requirements

COBRA (Consolidated Omnibus Budget Reconciliation Act) originally affected most health plans in 1986. Shortly after the act was passed, the DOL issued ERISA Technical Release 86-2 which provided model language employers should use in COBRA notices.

Since 1986, court cases and additional legislation have clarified COBRA provisions. However, with all the material changes in COBRA over the last 17 years, the DOL has never updated the model language in the ERISA Technical Release 86-2. The new regulations state that organizations using the model language set forth back in 1986 will not be considered in good faith compliance with COBRA requirements. Most organizations have modified their notices over the last 10 years as required by various legislative initiatives; however, if you still use the model notice wording set forth in 1986, your plan does not satisfy COBRA notice requirements.

The proposed regulations are divided into four key components:

- General Notice
- Employer’s Notice of a Qualifying Event
- Qualified Beneficiary Notices
- Plan Administrator’s Notice Obligations

The proposed regulations will affect group health plans as of the first day of the first plan year that occurs on or after January 1, 2004. If final regulations are not implemented before the effective date, employers must comply in good faith with their interpretation of the proposed regulations.

**General Notice (or Initial Notice of COBRA Rights)**

COBRA requires that group health plans notify each employee and covered spouse of COBRA rights at the “commencement of coverage.”



The proposed rules establish the timing, delivery method and content of the proposed notice.

The plan has 90 days to notify participants of their general COBRA rights beginning on the date they become covered. If a covered participant experiences a qualifying event during the first 90 days of coverage, the plan must notify the participant of his or her COBRA rights before sending the COBRA election notice.

The plan may notify employees by:

- Including the General Notice in the Summary Plan Description (SPD) if the information meets the General Notice requirements and the SPD content requirements.
- Providing a separate General Notice of COBRA rights.

The notice can be sent in several ways. It can go directly to the home address of the employee and the covered spouse. If the employee and spouse do not become covered at the same time, the General Notice must be delivered to each person within 90 days of his or her effective date of coverage. If a plan administrator is aware that the employee and spouse live at separate addresses,

the General Notice must be sent to each individual at the appropriate address. The notice may be sent electronically if certain DOL requirements are met. However, delivering the General Notice to the employee at work or at a work e-mail address does not satisfy the requirement to deliver the notice to the spouse.

The notice should be written clearly so that the average plan participant will understand it, and it must contain at least the following information:

- Name of the plan under which COBRA is available and who is responsible for COBRA administration.
- A general description of COBRA, including a description of who is considered as a qualified beneficiary; what is considered a qualifying event; what is the employer’s responsibility to notify the plan administrator of specific qualifying events; how long COBRA is available; when COBRA can be extended beyond the initial benefit period; and what are the COBRA premium payment requirements.
- An explanation of a qualified beneficiary’s responsibility to notify the plan of certain qualifying events or secondary qualifying events. An explanation of when and how a qualified beneficiary must notify the administrator.
- A statement stressing the importance of keeping the plan administrator informed of current addresses.
- A statement that the COBRA Notice does not describe fully the benefits under the plan or the rights of plan participants. Plan participants can get more information from the plan’s SPD or the plan administrator.

The proposed regulations include a model General Notice. Using the model notice is not mandatory under COBRA but it does provide template language a plan can use.

## Employer's Notice of a Qualifying Event

An employer must provide a plan administrator notice of the following employee qualifying events within 30 days:

- Termination of employment (for other than gross misconduct)
- Reduction of work hours
- Employee's death
- Medicare entitlement
- Commencement of bankruptcy proceedings of the employer with respect to retirees only

If the qualifying event and the loss of coverage do not occur simultaneously, the plan administrator must be notified within 30 days of the loss of coverage. This notice must include the covered employee's name, the qualifying event and the date it occurred.

## Qualified Beneficiary Notices

Plan participants must notify the plan administrator of qualifying events such as divorce, legal separation or loss of dependent eligibility. In addition, participants must notify the plan of a Social Security approved disability, any secondary qualifying events or termination of Social Security disability status. Plan participants have 60 days to notify the plan administrator of a qualifying event. The plan must have reasonable, written procedures for this notification. The procedures will be deemed reasonable if the following specific information is included in the SPD:

- Who should be notified
- How to notify the individual

- What information should be included in the notification

Under the proposed regulations, a plan cannot reject a notice of a qualifying event simply because the notice does not include all the information requested. The 60-day notification timeframe is a minimum requirement and plans can certainly offer a more generous timeframe. However, that timeframe may not be acceptable to your insurer or stop loss vendor. If you plan to extend the 60-day notice timeframe, your insurer or stop loss carrier should



agree with the timeframe your plan sets. The 60-day timeframe applies if, and only if, the plan has delivered the General Notice. If your organization fails to notify your employees of their initial COBRA rights, it is not reasonable to apply the 60-day timeframe.

The 60-day timeframe should be counted from the date of the qualifying event. However, if loss of coverage date is later (for example, coverage is continued to the end of the month), the 60-day timeframe is measured from the loss of coverage date. Also, the plan administrator can require only one notice of a qualifying event, regardless of the number of qualified beneficiaries it affects.

Finally, the regulations outline the notice requirements as they apply to disabled qualified beneficiaries. Currently under COBRA, plans can require a qualified beneficiary to notify them of a disability within 60 days of the date of the Social Security Administration disability determination and before the end of the initial 18-month COBRA continuation period. Under the proposed regulations, if the plan has not notified qualified beneficiaries that there is a 60-day time limit to provide verification of a social security disability, the plan cannot deny a request for a disability extension merely

because the plan did not receive the request in the required time. In other words, if you do not tell qualified beneficiaries about the time limit requirements for disability notification, you cannot deny an extension based on failing to meet the requirements.

## Plan Administrator's Notice Requirements

Aside from the General Notice, the plan administrator must provide three additional notices to qualified beneficiaries:

1. Notice of COBRA election rights and an election form.

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## NOTABLE THOUGHTS

**DO NOT GO WHERE THE PATH MAY LEAD, GO INSTEAD  
WHERE THERE IS NO PATH AND LEAVE A TRAIL.**

**RALPH WALDO EMERSON (1803-1882)**

2. Notice explaining why the participant is not eligible for continuation coverage if the individual reports a qualifying event and is not eligible for COBRA.
3. Notice of coverage termination if a plan administrator terminates COBRA coverage before the end of the maximum duration period.

**1. Notice of Election Rights**

The proposed regulations clarify an issue debated frequently on the timing of this Notice. The plan administrator must notify qualified beneficiaries of COBRA election rights within 14 days after the plan administrator receives a notice of a qualifying event.



The employer has 30 days to notify the plan administrator of the event. If the employer is also the plan administrator, the notice must be delivered within 44 days. If the loss of coverage occurs after the qualifying event, the notice timeframes are measured from the loss of coverage date.

The proposed regulations specify this COBRA Notice of Election Rights must be in writing and must include:

- Name of plan, name and contact information for the plan administrator and, if different, the COBRA administrator
- Name of the qualified beneficiaries and the qualifying event
- Date coverage will end if COBRA is not elected

- The coverage available, the timeframes to elect coverage, and the procedure for qualified beneficiaries to exercise their COBRA rights.
- A clear statement that each qualified beneficiary can independently elect COBRA. In addition, a statement that a covered employee or spouse may elect COBRA on behalf of all other qualified beneficiaries with respect to the same qualifying event.
- The plan’s payment requirements, the payment schedule, and payment policies (including the grace periods and consequences of late payment or non-payment), the address where payments should be sent.

Alternative coverage or conversion options the plan offers and how choosing an alternative option would affect COBRA rights.

- A statement that more complete information is available in the SPD or from the plan administrator.
- Information on the consequences of not electing continuation coverage under the plan. These consequences include, for example, the possibility of pre-existing condition limitations, losing the guaranteed right to purchase individual coverage without limitations, special enrollment rights and where to obtain information about these rights. The notice must explain how to revoke a waiver of COBRA and the time limit for doing so.

- Information on how to extend coverage either because of disability or a secondary qualifying event if coverage ends at 18 months. The notice must include instructions on how the qualified beneficiary should notify the plan administrator of either circumstance.
- An explanation of the maximum COBRA continuation period and what events will trigger termination of COBRA coverage.
- A statement on the importance of keeping the plan administrator informed of the current addresses of all qualified beneficiaries.

**2. Notification of Ineligibility for COBRA**

If the plan administrator receives a notice of a qualifying event from an individual who is not eligible for COBRA coverage, the plan administrator must notify the individual that he or she is ineligible for COBRA. The proposed regulations do not specify the content of this correspondence except the plan administrator is required to explain why the individual is not eligible for COBRA. The notice is required in order to avoid any misunderstanding regarding the plan’s requirement to offer COBRA. This notice has the same timeframe requirements as the election notice.

**3. Termination of COBRA Coverage**

If participants lose COBRA coverage before the end of the maximum duration period (for example, if they do not pay premiums on time), the plan administrator must notify the qualified beneficiary of coverage termination. The notice must be written so that the average plan

participant can understand it and must be delivered promptly. The notice must include the date coverage ends, explain why coverage has ended, and inform qualified beneficiaries of their rights to other coverage. Under the proposed rules, a plan administrator may include the certificate of creditable coverage with the notice of termination for administrative ease.

### Action Steps

The proposed regulations should not have a dramatic impact on most COBRA administrative functions. However, now is a good time to review your procedures and make sure they fall in line with the requirements of the proposed regulations.

The key areas of concern are as follows:

- Do you have procedures to deliver the General Notice within the 90-day required timeframe?
- Does the delivery method for the General Notice reasonably ensure that both the covered employee and the spouse will receive it?
- Do you have a procedure for delivering a General Notice when qualified beneficiaries are added to coverage? For example, if an employee enrolls when initially eligible for single coverage and marries 8 months later, does your current procedure ensure the spouse receives the General Notice?
- Do you notify COBRA continuants when their COBRA coverage terminates? If not, you should develop a sample notice and a procedure to make sure this notice is sent.
- How do you respond to a notice of a qualifying event

when the individual is not eligible for COBRA? Your plan administrator needs to respond to this type of situation in writing, within the required timeframe and with an explanation of why the individual is not eligible.

- How do you track and maintain current addresses in your system? You need to be aware when any qualified beneficiaries (including spouses and children) change addresses.
- Have you established your COBRA administrative practices in writing? The proposed regulations suggests that administrators establish written procedures to address COBRA requirements. It is a good practice to establish your organization's COBRA administrative procedures in writing.

These regulations hope to improve communication between potential qualified beneficiaries and plan administrators. Many of the new provisions address the necessary information to include in your required



notices. Your organization will need to amend its COBRA notices to ensure they satisfy the proposed COBRA requirements. Once you have amended your General Notice of COBRA Rights, you may want to consider sending it to all covered plan participants. Although the proposed regulations do not explicitly require you to notify your covered em-

ployees, their spouses and their dependent children, if you make significant changes to your General Notice, it is logical to supply them with this updated information.

McGraw Wentworth has established the following sample documents your organization can use as templates to meet the new proposed regulations:

McGraw Wentworth has established the following sample documents your organization can use as templates to meet the new proposed regulations:

- General Notice
- Qualifying Event Notice of COBRA Rights
- COBRA Election Form

You can secure copies at <http://www.mcwent.com/mwcobra.htm>.  
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