



# BENEFIT *Advisor*

## In This Issue

*In this seventh issue of the McGraw Wentworth Benefit Advisor for 2004, we will examine the recently finalized COBRA regulations. These regulations address notice requirements of employers and the timing and delivery method of these notices. The Department of Labor released proposed regulations addressing these issues in May 2003. These final regulations are very similar to the proposed regulations released last May, although there are some changes. This Benefit Advisor will address the requirements of these new regulations and offer sample notices your organization can customize.*

*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.mcgrawwentworth.com](http://www.mcgrawwentworth.com).*

## “Final COBRA Regulations”

In the May 26, 2004 edition of the *Federal Register*, the Department of Labor (DOL) released final COBRA regulations. The final regulations were released almost one year to the date of the proposed regulations issued last year. The regulations clarify the notice requirements of COBRA, specifically timing and content.



### Summary of the Final Regulations

The final regulations do not significantly change the proposed timing and content requirements. However, there are a few notable additions:

- The final regulations provide model forms. It would be wise to use these forms to ensure you are complying with DOL requirements.
- The final regulations clarify whether Medicare can be considered a secondary qualifying event. Under COBRA, a secondary qualifying event extends the coverage continuation period for dependents to 36 months. To be considered a secondary qualifying event, the event would trigger a loss of coverage, even if the first qualifying event did not occur.

For example, if an employee leaves the company, elects COBRA for a spouse only and then gets divorced before the end of the initial 18-month

COBRA period, the divorce would be considered a secondary qualifying event. The spouse would have lost coverage even if the employee had

remained with the company. On the other hand, Medicare entitlement typically would **not** cause the spouse or child of an active employee to lose coverage and therefore should not be considered a secondary qualifying event.

- The regulations require an employer to establish reasonable procedures a covered employee or qualified beneficiary can use to notify the plan of a divorce, death, loss of dependent eligibility, or any other change. To be considered reasonable, the procedure must be spelled out in the summary plan description (SPD). If no procedure is outlined in the SPD, employees can simply tell *anyone* that *normally handles benefit issues* or they can call the location that handles claim problems. How-

ever, if procedures for properly notifying the plan are outlined in the SPD, employees must follow those procedures.

- Another interesting inclusion concerns people who are considered disabled under social security. Formerly, to qualify for disability extension, a qualified beneficiary had to notify the plan of a social security disability within 60 days of receiving the determination letter but within the initial 18-month COBRA continuation period. These guidelines do not take into account anyone who may have been disabled before qualifying for COBRA. In the final regulations, qualified beneficiaries have 60 days to notify the plan of the social security disability determination. The 60 days are measured from the later of:

- The date of the disability determination letter from the social security administration.
- The date of first qualifying for COBRA.
- The date the qualified beneficiary would lose coverage under the plan.
- The date on which the qualified beneficiary is notified of the time limits through receipt of the SPD.



The final regulations are organized as follows:

- General Notice of Continuation Coverage
- Notice Requirements for Employers
- Notice Requirements for Covered Employees and Qualified Beneficiaries
- Notice Requirements for Plan Administrators

The final regulations will go into effect the first day of the first plan year following November 26, 2004. If your plan operates on the calendar year, the new regulations will go into effect on January 1, 2005.

### General Notice of Continuation Coverage

The General Notice of Continuation Coverage is the initial notice informing employees of their right to COBRA benefits. The regulations specify the timing, delivery and content required in the notice.

#### Timing

- The plan must notify an employee and a spouse of their right to continued coverage within the first 90 days they are covered under the plan. If a spouse becomes covered after the employee, the plan must notify the spouse within 90 days.
- If any covered participant experiences a qualifying event in the first 90 days of coverage and was not notified before the event; the plan is required only to provide a COBRA election notice.

- If the general notice is included in the SPD, it must be delivered within the timeframe required.

#### Delivery

- The notice can be sent directly to the employee's home, addressed to the employee and the covered spouse. If plan administrators are aware that the employee and spouse live at separate addresses, they must send the notice to each listed address.
- The notice may be delivered electronically providing certain DOL requirements are met. However, e-mailing the general notice to the employee at work does not satisfy the requirement to deliver the notice to the spouse.
- The proposed regulations allow plans to notify the employee at work but again that notification does not ensure that the covered spouse has been informed.

#### Content

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

- The name of the plan and the contact person if the plan participant needs more information.
- A general description of COBRA, including who qualifies as a beneficiary, what is a qualifying event, the employer's responsibility to notify the plan administrator of specific qualifying events, how long COBRA is available, when it can be extended

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beyond the initial benefit period, and requirements for paying the COBRA premium.

- When the qualified beneficiary must notify the plan administrator of certain qualifying or secondary qualifying events and how to do it.
- The qualified beneficiary's responsibility to inform the administrator of a determination of disability by the social security administration and how to provide this notice.
- A statement making it clear that plan participants keep the plan administrator informed of all participants' current addresses.
- A statement informing plan participants that the COBRA notice does not describe fully the rights and benefits available to them. The summary plan description or the plan administrator can provide more information.
- The general notice can be a separate document or included in the SPD. If provided in the SPD, the information included must meet the general notice content requirements.

The final regulations include a model General Notice. The model notice has been updated since the proposed regulations were issued.

### Notice Requirements for Employers

The final regulations did not significantly change employer's notice requirements. An employer must notify a plan administrator if the following employee qualifying events occur:

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

Employers must notify the plan administrator within 30 days after the employee loses coverage because of a qualifying event. This notice must include the plan name, the covered employee, the event and the date of the event.

### Notice Requirements for Covered Employees and Qualified Beneficiaries

The final regulations still require employees and qualified beneficiaries to notify the plan administrator of events such as divorce, legal separation or loss of dependent eligibility. Also, covered participants must notify the plan of a Social Security approved disability effective during the first 60 days of continuation coverage, any secondary qualifying events or loss of Social Security disability status. The plan participant has 60 days to notify the plan administrator of these events. The plan must explain how to notify the plan administrator in writing. These procedures will be deemed reasonable if they:

- Specify who should be notified.
- Indicate how a plan participant should notify the plan administrator.

- Designate what information should be included in the notification.
- Include the specific information in the SPD.

If the plan does not offer reasonable procedures for meeting the above requirements, the participant can inform the person who normally handles employee benefit matters either orally or in writing. This person can be an insurance company, staff member or third party administrator customer service representative.

A plan can allow more than 60 days notice. It cannot apply the 60 day time limit unless the plan has notified the covered employee of the time limit. In most instances, this information will be included in the General Notice as well as the Summary Plan Description.

A covered employee, a qualified beneficiary, or a representative can notify the plan. The plan administrator can require only a single notice of a qualifying event, regardless of the number of qualified beneficiaries it affects.

If the notice does not include all the information necessary, but is received on time, a plan cannot deny the notice. For example, if the notice states who is affected, the plan can simply request any other necessary information.

Finally, the regulations outline requirements for disabled qualified beneficiaries. The final regulations allow more flexibility to notify the



plan of a social security disability. An individual must notify the plan of a Social Security disability within 60 days of the later of:

- The date of disability determination by the social security administration.
- The date of the qualifying event.
- The date on which the qualified beneficiary would lose coverage as a result of a qualifying event.
- The date on which the qualifying beneficiary is notified of such timing requirements through the provision of a SPD.

Covered employees must notify the plan within the required timeframe or they may lose their right to continuing coverage through COBRA.

**Plan Administrator’s Notice Requirements**

Aside from the General Notice, the plan administrator must:

- Notify qualified beneficiaries of their COBRA election rights and provide an election form.
- Send a notice explaining why a participant is not eligible for COBRA coverage.
- Notify qualified beneficiaries if their coverage ends before the COBRA coverage period expires.

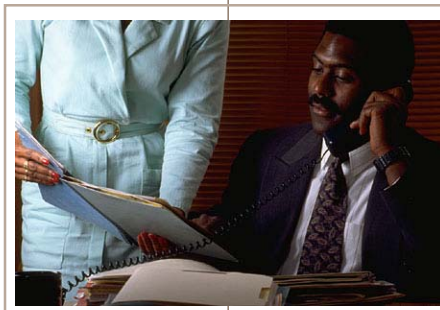
**COBRA Notice of Election Rights**

Within 14 days of being informed of a qualifying event, the plan administrator must notify qualified beneficiaries of their COBRA elec-

tion rights. Within 44 days after the qualifying event or loss of coverage, whichever is later, the final regulations require employers who are also plan administrators to explain to qualified beneficiaries how to apply for COBRA.

This notice must be written so that the average plan participant will understand it and it must include the following information:

- Name of plan and how to contact the person who administers COBRA coverage.
- Identity of all qualified beneficiaries by name or status (for example, spouse) and the qualifying event.
- The date current coverage will end if COBRA is not elected.
- The type of continuation coverage available or refer the individual to the plan’s SPD, the timeframes to elect coverage, and how to apply for COBRA.
- A clear statement that any qualified beneficiary can elect COBRA continuation coverage or the covered employee or spouse may elect it for all other qualified beneficiaries after the same qualifying event.
- Payment requirements such as the payment schedule, payment policies (including the grace periods and consequences of late payment or non-payment), and the address



where payments should be sent.

- A statement informing the beneficiary that more complete information is available in the summary plan description or from the plan administrator.
- The potential consequences if qualified beneficiaries do not choose to continue coverage under COBRA. For example, the possibility of pre-existing condition limitations, losing the guaranteed right to purchase individual coverage without pre-existing condition limitations, special enrollment rights and where an individual can obtain information about these rights. The notice must include a description of how to revoke a waiver of COBRA and the time limit to do so.
- A description of the maximum benefit period available under COBRA. A description of situations where COBRA coverage can end before the maximum benefit period.
- Information on how to contact the plan administrator to

extend COBRA beyond the original 18 months because of a disability or a secondary qualifying event. It must also include the time limit

for notifying the administrator. The notice should also explain that the qualified beneficiary must notify the plan if the beneficiary is no longer considered disabled by the Social Security Administration.

- A statement that all qualified beneficiaries must give the plan administrator their current address.

#### **Notification of Ineligibility for COBRA**

If the plan administrator receives a notice of a qualifying event, secondary qualifying event or social security disability on an individual who is ineligible for COBRA coverage, the plan administrator must inform the individual and explain why COBRA continuation coverage is not available. The notice is required to avoid any misunderstanding regarding the plan's requirement to offer COBRA. This notice has the same timeframe requirements as the election notice. Therefore, the plan administrator is required to notify the individual within 14 days of receiving the notice of the qualifying event that coverage is not available.

#### **Termination of COBRA Coverage**

If COBRA coverage will end before the maximum duration period (for example, if the beneficiary does not pay the premium on time) the plan administrator must notify the qualified beneficiary. The notice must be written clearly and sent as soon as possible. The notice must include the date coverage will end, why coverage is ending, and what other coverage is available to qualified beneficiaries, such as conversion policies.

This notice allows individuals to seek other coverage.

#### **Action Steps**

The final regulations are not very different from the regulations proposed last year. If you updated your notice and procedures last

year, complying with the final regulations on time should not be too difficult.

Review your documents and procedures to make sure they meet these requirements:

- A procedure to allow for the delivery of the general notice (or Initial Notice of COBRA Rights) within the 90-day required timeframe. You must also be reasonably sure both the covered employee and the spouse will receive the initial notice.
- A procedure for delivering a general notice when a new beneficiary is first covered under the plan. For example, if an employee initially enrolls for single coverage and adds a spouse 8 months later, you must have a procedure to ensure the spouse is notified of COBRA rights.
- A plan for notifying participants if COBRA will stop before the end of the maximum coverage period (18, 29 or 36 months). If not, you should develop a sample notice and create a procedure to make sure this notice is sent.
- A system for notifying an individual when he/she is not eligible for coverage.
- A system to track current addresses for employees, spouses and dependent children.
- A notice that accurately states how much time the beneficiary

has to provide a Social Security determination of disability letter.

- Review your General Notice, Notice of Qualifying Event and COBRA election notices to make sure they include the required information. Medicare entitlement will rarely be considered a secondary qualifying event as a practical matter.

Remember, these regulations are intended to establish better communication between potential qualified beneficiaries and plan administrators. Make sure your notices explain the requirements clearly. You should also have procedures covered



employees and qualified beneficiaries can use to notify the plan in writing of potential qualifying events. If there are no reasonable procedures, a covered

employee can simply tell the person who is responsible for answering benefit questions. This person may be your insurer or TPA representative.

McGraw Wentworth has developed sample notices for you. The forms may be downloaded at <http://www.mcwent.com/mwcobra.htm>. A copy of the Final Regulations is also available at the above website.

If you have any questions regarding these COBRA regulations, please contact your Account Manager. **MW**

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