

## New COBRA Requirements

By Lesley Sifers, Tax Favored Benefits, Inc.

The new COBRA regulations, originally proposed in May 2003, are now finalized. These new rules take effect on the first day of the first plan year beginning after November 26, 2004. So, calendar year plans must be in compliance on January 1, 2005.

The new rules create two new notice requirements, establish time limits for providing notices and specify what information must be included in the notices. On the plus side, the new rules provide much needed guidance to employers as well as some useful model notices. On the down side, the new obligations make the COBRA process more complicated and add new administrative burdens.

Before discussing the changes, here is a review of some COBRA basics:

Employers who have 20 or more employees on at least 50 percent of regular business days during the preceding calendar year and who offer certain kinds of **group health plans** must comply. All full-time and part-time employees, even those not enrolled in any group health plans, count. However, part-time employees only count as fractional employees based upon hours worked. For example, a part time employee averaging 20 hours a week counts as one-half of an employee.

Employers who are subject to COBRA must allow employees and dependents (called "**qualified beneficiaries**") covered under group health plans the opportunity to continue in those plans following certain events (called "**qualifying events**") that would normally cause the employee and/or dependents to lose coverage. Group health plans are broadly defined to include not only traditional medical coverage but dental, vision and prescription plans as well. Medical flexible spending accounts (also called medical reimbursement accounts) and cafeteria plans that offer medical benefits are also considered group health plans. Employer-sponsored programs that simply encourage good health, such as a fitness program, would not be covered under COBRA.

A qualifying event is an event that causes a covered employee and/or the employee's covered dependents to lose coverage under the group health plan(s). Some examples of qualifying events are:

- Termination of employment including discharge, resignation, retirement, layoff, strike or lockout;
  - Reduction in hours below the minimum threshold for plan participation;
  - Death, divorce or legal separation of a covered employee;
  - Loss of dependent status under the terms of the group plan(s).

The changes to COBRA apply to notice obligations and notice periods, and provide a new set of model notices that employers may choose to use. Here is a rundown of those requirements:

1. Initial notice (now referred to as “general notice”) – sent to employees and covered dependents at their home address(es). Must be sent within 90 days after coverage under the plan begins. Use the new model notice customized to your plan. DO NOT use the old model notice.
2. Qualifying event notice – sent to qualified beneficiaries when there is an event that triggers COBRA eligibility. Must notify **each** qualified beneficiary within 14 days. A new model notice is available.
3. Notices that plan administrators must provide to qualified beneficiaries include the election notice and two **new notices**: a “notice of termination” when coverage is ending and a “notice of unavailability” if continuation coverage is denied for any reason.

A description of COBRA rights must also be included in the Summary Plan Description (SPD). This may mean that your SPD must be revised to include a “detailed and easily understood” description that includes information about qualifying events, qualifying beneficiaries, premiums, notices, election requirements and duration of coverage. The SPD should also explain how other laws affect COBRA, including HIPAA, FMLA and Medicare entitlement, as well as the newly passed Trade Assistance Act. There also is special, required ERISA language that must be included.

In my next couple of articles, I will discuss COBRA and its myriad of requirements in more detail. For now, you need to review all of your current procedures and notices, as well as your SPD to determine what changes are needed. Your group plan providers should be able to help you with this – especially concerning the SPD – so be sure to meet with their representative(s).

You can also research this online and obtain the model notices at the Department of Labor website: [www.dol.gov](http://www.dol.gov).

Other helpful websites are: [www.onque.com](http://www.onque.com), [www.ebia.com](http://www.ebia.com) and <http://benefitslink.com>. Note: COBRA changes were first proposed in 2003 and the initial proposals were published and analyzed, so there are a lot of articles on the web that are out of date. Be sure you are looking at information on the regulations when they were finalized on July 25, 2004.