

## CLIENT ALERT

### DOL Issues Final Rules on COBRA Notice Requirements

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The Department of Labor (DOL) has issued final regulations detailing the time limits and content requirements for continuation of coverage notices that must be provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). *See* 69 Fed. Reg. 30083 (May 26, 2004). COBRA requires certain group health plans to give employees and certain family members (qualified beneficiaries) who lose their employer-provided group health coverage due to certain “qualifying events” the right to elect to continue such coverage for a specified time, depending upon the nature of the qualifying event.

The regulations, generally follow the DOL’s proposed regulations issued May 28, 2003. In addition to providing minimum standards for COBRA notices, the rules provide model notices that single-employer group health plans can use to satisfy their obligation to provide COBRA “general notices” and “election notices.”

The regulations apply to notice obligations arising on or after the first day of the first plan year beginning on or November 26, 2004. Thus, calendar year plans are subject to the new rules as of January 1, 2005.

Group health plans will need to revise their current COBRA notices, administrative procedures, and summary plan descriptions (SPDs) to comply with the new regulations. If you are interested in discussing the impact of the new regulations on your plan’s COBRA compliance materials, or in having your plan’s COBRA materials reviewed for compliance with the new regulations, please contact your regular Crowell & Moring contact.

The following discussion summarizes the key differences between the final and the proposed regulations.

#### General Notice

COBRA requires that group health plans provide written notice of continuation coverage rights to each covered employee and spouse when coverage begins.

Similar to the proposed regulations, the final regulations establish a 90-day period for furnishing this “general notice.” Generally, the notice must be furnished to each covered employee and to the employee's spouse (if covered under the plan) no later than the earlier of: (1) 90 days from the date on which the employee or spouse first becomes covered under the plan; or (2) the date on which the plan administrator is required to furnish a COBRA “election notice” to the employee or his or her spouse or dependent(s).

To eliminate redundancy and confusion, the final regulations provide that where the plan is required to provide an election notice within the initial 90-day period of plan coverage, the general notice need not be provided.

To further simplify plan administration, the final regulations’ new model general notice allows plans to use a generic notice, with plan-specific information added at the end. In addition, the final regulations eliminate the requirement that the general notice

identify the plan administrator and the plan's COBRA administrator. The final regulations only require that the notice provide the name, address, and phone number of any party who will, upon request, provide information about the plan and COBRA. In addition, the final regulations eliminate the requirement in the proposed regulations that the general notice describe how qualified beneficiaries who are receiving COBRA coverage must notify the plan that a second qualifying event has occurred, since this information generally is available from other sources, such as the plan document and the election notice. The revised model general notice also no longer requires plans to set forth COBRA coverage start dates.

Finally, the regulations clarify that the general notice does not have to be provided to dependent children.

### **Election Notice**

The final regulations eliminate the requirement that information concerning the plan's alternative coverage options and policy conversion rights (if any) be included in the COBRA election notice, since this information should be included in the plan or the SPD. Further, the regulations clarify that the COBRA election notice need not identify each individual entitled to COBRA coverage by name, but rather can refer to them by their status, e.g., employee, spouse or dependent child. The model election notice has been revised accordingly.

### **Qualified Beneficiaries' Notices**

COBRA requires an employee or qualified beneficiary to notify the plan administrator of the occurrence of certain qualifying events. In general, a plan must give an employee or a qualified beneficiary at least 60 days to notify the plan of a divorce, legal separation, a child's loss of dependent status, or the occurrence a second qualifying event. Under the proposed regulations, the starting date for this 60-day period was based, in part, on the plan's provisions regarding when COBRA coverage begins. To simplify administration, the final regulations modify this rule to provide that the 60-day period starts to run from the latest of the date on which: (1) the qualifying event occurs; (2) coverage is lost; or (3) the qualified beneficiary is informed, through the plan's SPD or the general notice, of the obligation to provide notice and of the procedures for providing such notice.

In addition, under COBRA, a qualified beneficiary's right to continue group health plan coverage is extended from 18 months to 29 months where the qualified beneficiary becomes disabled within the first 60 days of COBRA coverage. The proposed regulations permitted plans to require that qualified beneficiaries notify the plan of a disability within 60 days of the later of the date on which: (1) the Social Security Administration (SSA) determines the individual to have become disabled, or (2) the qualified beneficiary is notified of the obligation to provide the disability notice to the plan. To deal with the situation where an individual receives an SSA disability determination before a qualifying event occurs, the final rules provide that the individual's disability is deemed to continue as of the date of qualifying event, so long as the SSA has not issued a subsequent determination that the individual is no longer disabled. As a result, individuals with a prior SSA disability determination are considered to meet the requirement of being disabled "within the first 60 days" of the start of COBRA coverage.

The final regulations also clarify that plans may require qualified beneficiaries to provide notice of their disability within 60 days after the latest of the date on which: (1) the SSA makes its disability determination; (2) the qualifying event occurs; (3) the qualified beneficiary loses group health coverage; or (4) the qualified beneficiary is informed of the obligation to provide the disability notice.

**Good Faith Compliance**

Pending the applicability date of the final rules, DOL will view compliance with either the proposed or the final rules, including use of the model notices as proposed or finalized, to constitute good faith compliance with COBRA's notice requirements.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.