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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
US Department of Labor
200 Constitution Avenue NW
Washington DC 20210

Attention: COBRA Notice Regulations

We have assisted employers with their COBRA election and payment collection requirements since 1986. The majority of our clients are employers with fewer than 300 employees. Dealing with thousands of continuees; answering their questions, posting payments and providing information about COBRA rights and responsibilities has provided us insight into the thought process and concerns of people who are offered COBRA continuation. Over the years, we have witnessed a distinct improvement in the level of understanding exhibited by people in their election period and those who are continuing. Even so, our constant challenge is to provide information in a manner and format that conveys COBRA rights and responsibilities without overwhelming people. Based on our experience, the percentage of people who do not elect COBRA continuation because they misunderstood the information is almost non-existent. The percentage of people who do not elect COBRA continuation because they can not afford the coverage is almost 100%. It is interesting to note the Department's own assumption that "the percentage of qualified beneficiaries who lose the opportunity to elect COBRA coverage because they receive inadequate notice is very small". Nevertheless, in the spirit of consistency and quality, we welcome the guidance in the proposed regulations and offer the following comments.

2590.606-1. General Notice

(c) Content of notice.

Paragraph (1) provides that the general notice shall contain the name, address and telephone number of the party responsible for administration. Many employers outsource some or all of their administration. During the life of a plan, it is likely that the "party" responsible for COBRA administration will change, perhaps, several times, necessitating a mass mailing each time. The general notice should not have to be revised and distributed often. Multiple general notices are confusing and increase the expense of employers.

Paragraph (6) describes a statement to be included which stipulates that more complete information about COBRA rights is available from the plan administrator and in the plan's summary plan description. While this statement seems innocent enough, it invites

discussion of a larger issue; the contents and structure of a summary plan description. One can not dispute the Department's long standing guidance about what constitutes a proper summary plan description. However, when an employer fully insures its group health plan, it invariably considers the insurance contract as the plan document and the insurance booklet or certificate as the summary plan description. What small business owner would believe that it had to supplement documents (and absorb that expense) when those documents appear adequate and are provided by the carrier? While we may decry this standard of compliance, it is a reality and a long-standing one. In fact, this has been encouraged by the insurance carriers and acknowledged by the courts. Carriers rely on their own familiar plan language in order to pay claims. And in the event of a dispute, the courts use what is available, which is usually the booklet or certificate given to employees. Insurance contracts are proprietary documents that carriers must file with each state in which business is offered. Employers do not have the authority to amend an insurance contract for anything other than options offered in the document. We believe that most employers will interpret the requirement to add the summary plan description statement as a requirement for the providing insurance carrier. Most carriers will not interpret this the same way. As a result, no addition will be made, because each party thinks the other is responsible. With the expense of health coverage already a burden for small employers, suggesting that they hire an attorney to prepare a wrap document to make their insurance contract a plan document and their insurance booklet a summary plan description to meet the criteria of these regulations will likely be met with resistance or denial. The Department could provide a real public service by offering model wrap language for employers to use, much like the model language the IRS provided for TEFRA, DEFRA and REA. To be even more helpful, HIPAA plan document and SPD requirements could also be incorporated.

Model General Notice

In the Section "COBRA Continuation Coverage" the statement "For each qualified beneficiary who elects COBRA continuation coverage, COBRA continuation will begin" and one of two options is to be entered. Option 1 is specific. Option 2 is not specific and will not be useful to most people. Further, many plans provide that coverage ends at the end of a month, but make exceptions for death or divorce and terminate coverage on the date of the event. Trying to cover every situation will result in information overload. This information is more appropriate in the election letter.

In two places, the model general notice directs people who have a second event to notify a particular party "to be named" of the second event. On its face, this seems like good information. However, this is information that is much more important to people who are already on COBRA continuation. And, if the "appropriate party" is the outsourced COBRA

administrator, that party could change several times, creating outdated information or additional expense for the employer to continually update and distribute its general notice. We believe that the effectiveness of the general notice will not suffer by elimination of the sentences directing where the notice must be sent in the event of a second event or a disability. The information is more appropriately found in the COBRA Election Notice.

Our experience has been that people do not read the general notice, do not keep it to refer to and do not become interested in COBRA until they lose coverage. When people are first becoming covered by a plan, they are more concerned about understanding the benefit coverage, not about what might happen when they might lose coverage sometime in the future. However, the general notice must still be provided. The objective should not be to overload people with information that can become outdated easily, resulting in either useless general notices or multiple general notices. The objective should be to provide concise, useful and timeless information. Even though the Department will not require the use of its model, employers may demand that it be used in order to demonstrate good faith compliance. Therefore, the final version should eliminate those portions that can easily become outdated and for which the COBRA Election Notice suffices.

2590.606-3. Notice requirements for covered employees and qualified beneficiaries.

Sections (c) (1) (iii) and (c)(2)(i)(B) specify that “The date on which the qualified beneficiary is informed, through the furnishing of the summary plan description or the notice described in Section 2590.606-1...” What if the information is provided in the COBRA election letter? Why must the SPD and the general notice be the only means of furnishing this information?

Section 2590.606-4. Notice requirements for plan administrators.

The information required by Section (b)(4)(vi) will add to an already lengthy letter, will confuse many people and will definitely overwhelm people with information of little value. No proof has been presented that the absence of this information up to now has caused any hardship. If the stated objective is to reduce risk and improve efficiency, then the value of this particular section needs to be debated. The Department already concedes that a very small percentage of qualified beneficiaries have been affected by inadequate information. Why pile on more that will only serve to distract people from the important information they do need to understand the election process?

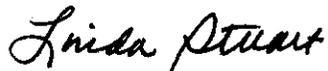
Sections(b)(4)(vi) and (xiii) both refer to an individual’s right to guaranteed access to individual health coverage. Our state has a high-risk pool. Therefore, the insurance carriers

which write individual coverage do not have to offer a person individual health coverage. If a person applies for individual health coverage and is turned down, that person is eligible for the state pool. Therefore, reference to such a right is misleading.

Section (b)(4)(xv) requires a statement that the election letter does not fully describe the continuation coverage or other rights and directs people to the SPD or the plan administrator. Inclusion of such a statement undermines the election letter's credibility. The election letter should be providing the most specific information. The contents of the election letter can be adjusted more quickly and easily than a plan document or SPD. Therefore, it can and should be expected to provide the most current information that qualified beneficiaries can rely on. For everyday people, plan documents and SPD's have already become too intimidating to read, much less understand.

Collectively, we should be able to design a COBRA election letter that can reasonably provide the salient information and make it concise and easy to read. We are attaching our general notice titled "Educational Notice about COBRA Continuation Coverage" and our election letter titled "Continuation Election Notice" for your review. These have been time tested and are the result after years of dealing directly with qualified beneficiaries and continuees. We have very few questions and very few people who misunderstand. The presentation is succinct and informative without being overwhelming or intimidating.

Respectfully submitted by:



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COBRA Compliance, Inc.
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Indianapolis IN 46240
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Lindas@cobracomp.com

Re: ABC COMPANY

EDUCATIONAL NOTICE ABOUT COBRA CONTINUATION COVERAGE

The Consolidated Omnibus Budget Reconciliation Act of 1985, referred to as COBRA, requires that most employers sponsoring group health plans offer covered employees and their families the opportunity for a temporary extension of health coverage (*called "continuation coverage"*) at group rates, if certain events occur where the coverage would otherwise end. This notice is not confirming that you have coverage or, if you have coverage, it is not notifying you that it is terminated. Rather, it is intended to summarize your rights and responsibilities under COBRA. We urge you to read this information carefully and save it for future reference.

Once you and your family become covered by the above employer's group health plan(s), there are certain events recognized by COBRA that can cause you or your family to lose coverage. Those events are:

1. A termination of the employee's employment (*for any reason other than gross misconduct*) or reduction in the hours of employment required to maintain coverage;
2. The death of the employee;
3. A dependent child ceases to be a "dependent child" as defined under the terms of the group health plan(s);
4. Divorce or legal separation from the employee; or
5. The employee becomes entitled to Medicare.

Similar rights may apply to certain retirees, spouses and dependent children, if the employer commences a bankruptcy proceeding and these individuals lose coverage.

Please note that it is the responsibility of the employee or a family member to inform the Plan Administrator, which is also the above employer, of a divorce, legal separation, or a child losing dependent status within 60 days of the event. Failure to notify the employer within 60 days, will eliminate any rights to COBRA continuation. The employer has the responsibility to report the employee's death, termination, reduction in hours of employment or Medicare entitlement.

Once notified, the Plan Administrator, which is also the above employer, or its COBRA service provider, will notify you that you have the right to elect to reinstate your terminated coverage. An election notice will be sent to your address last reported to the employer. You have at least 60 days from the date you would lose coverage to reinstate your terminated coverage. If you do not make a timely election, your coverage will remain terminated.

If you elect to continue coverage, it will be the same coverage the employer provides to similarly situated employees or family members who have not had a COBRA event. However, life and disability insurance are not part of COBRA continuation.

You may maintain continuation coverage for 18 or 36 months, depending on the event that caused the loss of coverage. If the event was termination of employment or reduction in hours, you may continue coverage for 18 months. All other events allow you to continue for 36 months. The 18 months may be extended to 36 months for a dependent, if a second event (*such as death, divorce,*

legal separation or Medicare entitlement) occurs during the 18 month period. The 18 months may be extended to 29 months if an individual who lost coverage is disabled for Social Security purposes at any time during the first 60 days of COBRA continuation coverage. This extension is only available if the Plan Administrator is notified within 60 days of the Social Security Administration's determination *and* before the end of the 18 month period. In no event will COBRA continuation coverage last more than a total of 36 months.

A child who is born to or placed for adoption with the covered employee during a period of COBRA coverage will be eligible to become a qualified beneficiary. These qualified beneficiaries can be added to COBRA coverage under the same plan procedure required of active employees who want to add a dependent to coverage.

You may have to pay for all of or a portion of the cost to continue coverage. The cost may be different from what you were paying for coverage before your event. There is a grace period of at least 30 days for you to make your payment.

Your continuation coverage may be cut short under any of the following circumstances:

1. The payment for continuation coverage is not made on time;
2. The employer no longer provides group health coverage to any of its employees;
3. You, your spouse or dependents become covered under another group health plan that does not apply any exclusion or limitation with respect to any pre-existing condition you or your family members may have;
4. The person on COBRA continuation becomes entitled to Medicare after the date he or she elects COBRA coverage; or
5. If coverage was extended for up to 29 months due to disability, the individual is no longer disabled.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) changes the way group health plans may impose pre-existing condition limitations. If you become covered by another group health plan and that plan contains a pre-existing condition limitation that affects you, your COBRA coverage cannot be terminated. However, if the other plan's pre-existing condition rule does not affect you, your COBRA continuation may be terminated.

You do not have to show that you are insurable to elect COBRA continuation coverage. However, you must be eligible for coverage. Your COBRA continuation coverage may be terminated retroactively if you are determined to be ineligible.

At the end of the 18, 29 or 36 month continuation period, you could be allowed to enroll in an individual conversion health plan, if a conversion health plan is available to active employees.

If you have any questions about COBRA or have a change of address, marital or dependent status, please notify the Plan Administrator below:

ABC COMPANY
123 CHERRY STREET
ANYWHERE, USA 00000
(000) 000-0000

COBRA COMPLIANCE, INC.
8900 KEYSTONE CROSSING
SUITE 600
P O BOX 40036
INDIANAPOLIS IN 46240
(317) 573-2013 800-886-2001

07/18/2003

MR. & MRS. JOHN DOE
& DEPENDENT(S), IF ANY
123 CHERRY ST
ANYWHERE CA 00000

CONTINUATION ELECTION NOTICE

Your coverage under the ABC COMPANY group plan terminates as of 07/31/2003. You have the option to continue your coverage at your own expense. The benefits(s) that may be continued are listed on the attached page. You may continue benefits until whichever of the following occurs first:

1. 18 Months from the Qualifying Event Date of 07/31/2003; or
2. You and/or your dependent(s), if any, become covered under any other group plan that does not apply any pre-existing condition limitation or exclusion to you and/or your dependent(s); or
3. You become entitled to Medicare; or
4. Your payments are not made on time; or
5. ABC COMPANY ceases to provide a group health plan.

COBRA Compliance, Inc. is the Employer's designated representative with regard to the receipt of election forms and continuation payments. We are NOT an insurance company or the provider of any benefits. If you would like to continue your benefits, please complete the enclosed Election Form and return it to us, as the Employer's representative, no later than 09/29/2003. If you fail to timely elect, you will lose your right to continue coverage. Proof of timely election is your responsibility. Proof consists of a certified mail receipt or a COBRA Compliance, Inc. receipt. If you elect, and are eligible to continue coverage, you are responsible to pay for coverage from 08/01/2003. Even though you are not required to pay now, you may want to pay with your election because coverage will NOT be reinstated until after payment is received. **Reinstatement may take 7 - 10 business days after payment is received.** When we receive your timely election, with or without payment, we will forward payment instructions.

Whether or not you want to continue coverage, please complete the appropriate form and return it to us.

COBRA COMPLIANCE, INC.

BENEFIT(S) ELECTION FORM

ABC COMPANY

NAME: JOHN DOE

The premium for the first partial month, if applicable, will be calculated for the remaining number of days in the month the Qualifying Event occurs. Subsequent premiums are due, in full, on the first of each month. Payments must be made current within forty-five days of your election.

Your Qualifying Event Date: 07/31/2003
Your Last Day to Elect: 09/29/2003

1. Keep in mind that reinstatement may take 7 - 10 business days after payment is received.
2. Checks should be made payable to the former employer.
3. Payments should be mailed to **COBRA Compliance, Inc.**
4. You are responsible for timely payment. You will NOT be sent any premium notice or reminder.
5. A "Non-Sufficient Funds" check will mean no payment.
6. A late payment will NOT be accepted. Coverage will terminate with no possibility of reinstatement.
7. The plan rates may change. When we are notified of a change in the monthly premium, we will notify you in writing as soon as possible.
8. Do NOT send claims to COBRA Compliance, Inc. We are not an insurance company.
9. The 18 months may be extended to 36 months for a covered dependent, if a second event (such as divorce, legal separation or a child losing dependent status) occurs during the 18 month period. It is the responsibility of you (or your family) to inform us or the above employer of such an event within 60 days of the event. Failure to notify within 60 days will eliminate any rights to additional COBRA continuation for the covered dependent.
10. If you or any of your covered dependent(s) were disabled for Social Security purposes within sixty (60) days of the above Qualifying Event Date, continuation coverage may be extended from 18 to 29 months. In order to be eligible for this extension, you must advise COBRA Compliance, Inc. of such disability within sixty (60) days of the Social Security determination and before the end of your eighteen month continuation period. The cost of continuation coverage can be increased up to 150% for the additional eleven months. It is your responsibility to apply for a disability benefit from Social Security. You should contact your Social Security office for questions and procedures.

PLEASE KEEP THIS INFORMATION FOR FUTURE REFERENCE!

WAIVER LETTER

ABC COMPANY

(ONLY PERSONS DECLINING COVERAGE SHOULD SIGN THIS FORM)

I have received the notification of the right to continue certain covered benefits for myself and my covered dependent(s), if any, and the BENEFIT(S) ELECTION FORM.

At this time, the undersigned waives the right to continue coverage. Family coverage, if provided, is also waived by signature of my spouse, if any, in the space provided below.

In waiving this coverage, I (*we*), hereby acknowledge that at the end of the election period, 09/29/2003, this decision will be final and irrevocable. I (*we*) also understand that any break in coverage of more than sixty-three days may cause loss of "portability" of coverage for a pre-existing condition.

Sincerely,

Signature of JOHN DOE

Spouse or Child(ren)'s Guardian Signature

Date