

## The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and

## The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

**COBRA** Continuation of health care provisions were enacted as part of this Act, and are codified in Part 6 of Title I of ERISA. These provisions apply to group health plans of employers with 20 or more employees on a typical working day in the previous year. COBRA gives participants and beneficiaries the right to maintain, at their own expense, coverage under their health plan that would be lost due to a triggering event (such as termination of employment) at a cost that is comparable to what it would be if they were still members of the employer's group. Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. (*See the accompanying Model Notification Letter.*) The law also places notification obligations upon plan administrators, employers, and qualified beneficiaries with regard to certain "qualifying events." In most instances of employee death, termination of employment, reduced hours of employment, entitlement to Medicare, or bankruptcy, it becomes the employer's responsibility to provide a specific notice to the plan administrator. The plan administrator must then notify the qualified beneficiaries of the opportunity to elect continuation coverage.

### **COBRA notification requirements generally fall into four categories:**

- **Notice to participants upon entering the plan (see forms section for sample).**

An employer (or other agent of the plan) is required to distribute a written notice of an individual's COBRA rights to each employee and covered spouse when they first enter the health plan. The Department of Labor has issued a model notice for this purpose. An employer or plan representative is considered as having demonstrated good-faith compliance with the law if the employer or representative mails the notice by first class mail to the covered employee's and spouse's last known address. In addition to providing employees with special written notices, employers also should incorporate an explanation of the applicable COBRA rights in the plan's summary plan description provided to employees. A model letter is attached.

- **Notice from employer to plan administrator.**

Where the employer is not the plan administrator, the employer is responsible for notifying the plan administrator of certain qualifying events. The employer has 30 days from the date on which coverage ceases under the terms of the plan (for example, a reduction in hours), the date of the covered employee's death, the date of the covered employee's termination of employment (for reasons other than gross misconduct), the date on which the covered employee becomes entitled to Medicare, and the date on which the employer files for bankruptcy. An employer under a multi-employer plan may take more than 30 days for notifying the plan administrator if the plan specifically provides for that longer period of time.

- **Notice from administrator to beneficiaries.**

The administrator of the health plan must notify qualified beneficiaries of their COBRA rights when a qualifying event occurs. The administrator must provide the notice within 14 days after receiving notice of any qualifying event. Multi-employer plan administrators may take more than 14 days to notify qualified beneficiaries of their rights if the plan document and summary plan description specifically provide a longer period for providing notice.

- **Notice from employees or beneficiaries to administrator.**

COBRA requires a covered employee (or the affected spouse) to notify the plan administrator if the covered employee becomes divorced or legally separated from a spouse covered under the plan. A covered employee or the affected dependent child is required to notify the plan administrator if the dependent child loses dependent status under the employer's plan. The covered employee, spouse, or dependent must notify the administrator within 60 days after the later of the date of the qualifying event or the date on which the affected spouse or dependent child would lose coverage as a result of the qualifying event. The group health plan is not required to offer the qualified beneficiary the opportunity to elect COBRA coverage if the administrator does not receive the required notification. ( [26 USC 4980b(f)(6)] IRC §§ 4980B(f)(6); [29 USC 1166(3)] 29 USC § 1166(3); (Prop.) [26 CFR 1.162-26] 26 CFR § 1.162-26, Q&A-33)

**HIPAA** The Act was enacted on August 12, 1996, and amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage provided in connection with employment. The HIPAA portability provisions relating to group health plans and health insurance coverage offered in connection with group health plans are set forth under a new Part 7 of Subtitle B of Title I of ERISA. These provisions include rules relating to pre-existing conditions exclusions, special enrollment rights, and prohibition of discrimination against individuals based on health status-related factors.

Compliance requires tracking of employees' and dependents' coverage periods and benefits; review of existing health plans for any required changes; notification of COBRA qualified beneficiaries regarding changes; revision of benefits communications; and preparation of new forms. The central elements of HIPAA are its portability provisions, which are designed to help employees who change or lose jobs to maintain health coverage by requiring subsequent employers to accept them into health plans. HIPAA:

- prohibits group health plans from establishing eligibility rules based on health status;
- limits the duration and extent to which group health plans may exclude pre-existing conditions;
- requires group health plans to track and provide certification of an individual's coverage when the individual leaves the plan so that he or she may gain access to another plan with reduced or no pre-existing condition limitations;
- requires special enrollment periods for individuals losing other coverage under certain circumstances;
- clarifies and extends COBRA; and
- expands ERISA's disclosure requirements.

We suggest that you contact your insurance broker for assistance and/or clarification regarding HIPAA and your health insurance plan(s).