



**The
ERISA
Industry
Committee**

July 3, 2014

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Attention: Health Care Continuation Coverage

RE: RIN 1210-AB65 (Health Care Continuation Coverage)

Ladies and Gentlemen:

The ERISA Industry Committee (“ERIC”) is writing in response to the request of the U.S. Department of Labor (“DOL”) for comments regarding proposed amendments to the notice requirements for health care continuation (“COBRA”) coverage (the “proposed regulations”).¹

ERIC’S INTEREST IN COBRA

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and other welfare benefits of America’s largest employers. ERIC’s members sponsor some of the largest private group health plans in the country. These plans provide health care to millions of workers and their families.

ERIC’s members devote considerable time and resources to their benefit plans. However, they must balance the desire to provide high quality, affordable health care with the need to contain the costs for these programs. Any additional burdens placed on plans could adversely affect the ability of these employers to continue to provide generous benefits and could result in increased costs for participants.

SUMMARY OF COMMENTS

ERIC makes the following recommendations with respect to the proposed regulations:

- The DOL should modify the notices only when necessary, provide that the revisions apply only prospectively, and notify the public when the notices are revised.
- The DOL should clarify that general notices are not required to be provided to dependent children.

¹ U.S. Dep’t of Labor, Health Care Continuation Coverage, 79 Fed. Reg. 26192 (May 7, 2014).

OVERVIEW

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”) requires plan sponsors to offer to continue coverage under their health plans when certain individuals (known as “qualified beneficiaries”) would otherwise lose coverage as a result of certain events (known as “qualifying events”).² In connection with this requirement, plan sponsors must provide covered employees and spouses with a general notice of their rights under COBRA soon after coverage begins.³ Plan sponsors must also provide qualified beneficiaries with an election notice when they have qualifying events.⁴

The DOL previously issued regulations regarding continuation coverage. These regulations include a model general notice and a model election notice that plan sponsors can use to satisfy the COBRA notice requirements.⁵

The DOL has recently proposed to amend the regulations by removing the current model general and election notices. In the preamble, the DOL indicates that it will continue to provide model notices on its website.⁶

COMMENTS

I. The DOL should modify the notices only when necessary, provide that the revisions apply only prospectively, and notify the public when the notices are revised.

ERIC supports the efforts of the DOL to maintain up-to-date notices. Many ERIC members use the DOL’s model notices, as modified for their particular plans, and appreciate the efforts of the DOL to provide current versions of the notices. Other members (or their service providers) customize their general and election notices based on the content of the DOL’s model notices. For example, companies might elect to change the model language for administrative purposes, such as to include all of the items that need to be tailored to each plan in one section. They may also prefer that the notices resemble the style of the other communications that are regularly sent to participants.

The preamble explains that the DOL proposes to eliminate the model notices from the regulations so that the DOL can amend the model notices more easily.⁷ ERIC urges the DOL to evaluate carefully the need for each change to the model notices. ERIC’s members, especially those that modify the model notices, have indicated that they will need to identify each change that is made by the DOL and then determine whether it is an appropriate change for their notices. A company that relies on outside service providers to administer COBRA provisions will need to discuss the change with the service providers and might incur additional charges for updating the notice. In addition, if a company has incorporated the model general notice in its summary plan description,⁸ changing the model language might require the company to re-print the entire summary plan description or to print a

² ERISA § 601.

³ ERISA § 606.

⁴ *Id.*

⁵ 29 CFR §§ 2590.606-1, 2590.606-4.

⁶ 79 Fed. Reg. at 26193.

⁷ *Id.*

⁸ 29 CFR § 2590.606-1(e) allows a plan administrator to satisfy the general notice requirement by including the necessary information in a summary plan description.

summary of material modifications, a process that could involve substantial printing costs. For these reasons, ERIC urges the DOL to avoid changes that are primarily stylistic and to minimize the frequency with which the DOL modifies the model notices.

Additionally, when the DOL posts new notices, the regulated community may not know that it has done so and may not easily recognize the changes that were made. ERIC encourages the DOL to publicly announce when it updates the form and post a redlined version that reflects the changes that were made.

ERIC also requests that DOL revise the proposed regulations to make clear that any change in the model notice applies only prospectively, to notices based on the model that are delivered a reasonable period of time after DOL notifies the public that it has posted an updated notice on its website. A provision that expressly allows plan administrators to rely on the previous safe-harbor language for a reasonable period will allow the plan administrator time to discover that the DOL has updated the model notice and to implement any changes that are appropriate for the plan's notices based on the model language.

II. The DOL should clarify that general notices are not required to be provided to dependent children.

ERISA provides that group health plans must provide the general notice to covered employees and their spouses.⁹ ERISA states:

“the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection...”

Although ERISA does not require general notices to be provided to dependent children, the language in the current COBRA regulation can be read to imply that this is a requirement for dependent children who do not share the employee's or spouse's residence.¹⁰ The existing regulation concerning the general notice states:

“Nothing in this section shall be construed to create a requirement to provide a separate notice to dependent children who share a residence with a covered employee or a covered employee's spouse to whom notice is provided in accordance with this section.”

Neither the statute nor the regulation requires an employer to give the general notice to dependent children in any circumstance. ERIC urges the DOL to correct this implication by modifying this language to eliminate the language after “dependent children”.¹¹

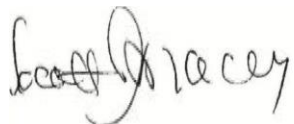
⁹ ERISA § 606(a)(1).

¹⁰ 29 C.F.R. § 2590.606-1(d).

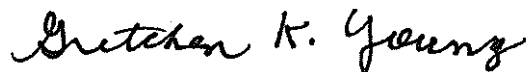
¹¹ That is, that sentence of the regulation would be revised to just state “Nothing in the section shall be construed to create a requirement to provide a separate notice to dependent children.”

ERIC appreciates the opportunity to provide comments on the proposed regulations. If the DOL has any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Macey".

Scott J. Macey
President & CEO

A handwritten signature in black ink, appearing to read "Gretchen K. Young".

Gretchen K. Young
Senior Vice President, Health Policy