

Reasons Why You May Not Want to Use Model COBRA Notices

Issue

The DOL issued its Final COBRA Regulations in May 2004, providing model notices for the election notice and general notice.¹ Some employers replaced their notices with the model notices. Are there any reasons why they should reconsider?

Solution

There are two primary reasons why employers should consider revising their notices from the model notices:

- The model notices omit some content that should be included.
- The model notices include some content that should either be omitted or revised.

What follows is a non-exhaustive list of some of the reasons.

Explanation

The election notice is at the core of COBRA compliance and the subject of almost all litigation. Its purpose is “to provide qualified beneficiaries with notice of their right to elect continuation coverage under the plan.”²

Content that should be in the election notice, but is omitted in the model notice.

- Health FSA rules. If a Health FSA is a HIPAA-excepted benefit and meets other requirements, an employer has a limited obligation to offer COBRA, if at all.³
- Terminating events. One event missing from the model notice is when an individual is no longer disabled during a disability extension period.⁴ The model notice does not require qualified beneficiaries to provide notice of events that would cause early termination (e.g., Medicare entitlement)⁵ and the consequences for failing to do so (i.e., retroactive termination of coverage).
- Qualified beneficiary definition. A child born to or adopted by a covered employee during COBRA is a qualified beneficiary.⁶ The model notice definition also omits a key element: plan coverage the day before the qualifying event.⁷
- Qualified beneficiary notice procedure. For documentation reasons, employers should require notice of a qualifying event, secondary event or disability to be via a written form.⁸ The notice procedures should indicate the consequences of untimely notices: COBRA need not be offered or extended.

Model notice content that should be omitted or revised in the election notice.

- Secondary events. The model notice states that 18-month extensions are “available to spouses and dependent children who elect continuation coverage.”⁹ The model notice would make a non-qualified beneficiary added during COBRA (e.g., a new spouse) eligible for the extension. However, extensions are required “only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event.”¹⁰

The general notice purpose is “to provide written notice of COBRA rights to each covered employee and spouse (if any) ‘at the time of commencement of coverage.’”¹¹ This is the employer’s chance to ensure that all potential qualified beneficiaries have been notified of their rights from the outset of participation.

Content that should be in the general notice but is omitted in the model notice.

- Health FSA rules. See comments under election notice above.
- Anticipation of a qualifying event rule. Spouses of employees should be made aware of this rule if coverage is dropped in anticipation of a qualifying event (e.g., divorce).¹²
- Qualified beneficiary definition. See comments under election notice above.
- Notice procedures. While the model notice contains time frames for the qualified beneficiary to notify the employer of a qualifying event (e.g., a dependent losing dependent status), it does not contain time frames for notice of secondary events or disability extensions and it fails to identify the consequences of untimely notice: COBRA need not be offered or extended.¹³

Model notice content that should be omitted or revised in the general notice.

- COBRA extensions. The model notice gives the right to a disability extension to any “anyone in your family.”¹⁴ However, only qualified beneficiaries are eligible.¹⁵ The model notice also states that an 18-month extension is available to “the spouse and dependent children in your family.”¹⁶ Again, only qualified beneficiaries are eligible.¹⁷

For More Information

Infinisource has expended considerable time and effort to address the above and other issues in developing its notices. Such effort includes input from internal and external legal counsel. We can also place special inserts into notices when needed. We started providing COBRA administrative services in the same year that COBRA was enacted. Our collective expertise is available to you at 800-300-3838

¹ Appendices to 29 CFR §§2590.606-1 and 2590.606-4.

² Preamble, 69 Fed. Reg. 30083, 30088.

³ 26 CFR §54.4980B-2, Q/A-6.

⁴ 26 CFR §54.4980B-7, Q/A-1(a)(6).

⁵ 26 CFR §54.4980B-7, Q/A-1(a).

⁶ 26 CFR §54.4980B-3, Q/A-1(a)(1)(ii).

⁷ 26 CFR §54.4980B-5, Q/A-1(a).

⁸ 29 CFR §2590.606-3(b)(3).


⁹ Appendix to 29 CFR §2590.606-4.

¹⁰ 26 CFR §54.4980B-7, Q/A-6(b).

¹¹ Preamble, 69 Fed. Reg. 30083, 30085.

¹² 26 CFR §54.4980B-4, Q/A-1(c).

¹³ 29 CFR §2590.606-3.



¹⁴ Appendix to 29 CFR §2590.606-1.

¹⁵ 26 CFR §54.4980B-7, Q/A-5.

¹⁶ Appendix to 29 CFR §2590.606-1.

¹⁷ 26 CFR §54.4980B-7, Q/A-6(b).