



Mark Salvia

# Benefit Trends

Mark Salvia is a partner with Hubbard Bert Karle Weber Inc. and has been in the employee benefit consulting profession for 22 years. He specializes in employee benefit plan design for several hundred clients throughout northwestern Pennsylvania.

## Employers Need to Check COBRA Compliance

In 1985, the U.S. Department of Labor (DOL) introduced Consolidated Omnibus Budget Reconciliation Act (COBRA) as part of legislation that amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code and the Public Health Service Act. COBRA generally requires that group health plans with 20 or more employees in the prior year offer employees and their families the opportunity for continuation of health coverage in some instances where coverage under the plan otherwise would be terminated.

Just when you thought you were in compliance, the DOL has introduced new requirements under the law. The deadline for complying with the new COBRA notification rules is upon us. On May 26, 2004, the DOL announced the final rules regarding notice requirements under COBRA for employees, employers and plan administrators. The effective date of these changes must be no later than the first day of the first plan year that begins on or after Nov. 26, 2004. As an example, calendar year plans must have an effective date of Jan. 1, 2005.

### Checklist for Employers

The following checklist can assist employers with implementing these changes.

- Revise and update all existing forms, notices and documents to comply with the Final Regulations' content and time frame requirements. The final rules regarding COBRA notice requirements are available online at: [www.dol.gov/ebsa/regs/fedreg/final2004011796.pdf](http://www.dol.gov/ebsa/regs/fedreg/final2004011796.pdf)
- Develop and/or revise your "Initial COBRA Notice" to ensure it meets the new notice requirements.
- Develop a "COBRA Unavailability" notice to be given to participants who do not qualify for COBRA continuation.
- Develop an "Early Termination of COBRA" notice for those instances when coverage will end before the normal expiration date.
- Clarify language in forms, notices, and documents (for example, Summary Plan Descriptions or SPDs) concerning Medicare entitlement as a second qualifying event.
- Develop "reasonable" procedures in the SPD by which the employee and/or qualified beneficiary must notify the plan administrator/employer of a qualifying event (divorce, legal separation, loss of dependent child status, etc.).

These new COBRA notice regulations position increased communication burdens on employers and plan administrators. Forward development of template notices will assist with compliance. Employers are cautioned to avoid the use of "one size fits all" notices in all cases. In numerous situations, an individually personalized notice will be necessary.

If you haven't incorporated these changes listed above into your COBRA administra-

tion, you need to become compliant or risk paying fines for employees' past and future medical bills, plus legal fees.

These changes apply to all COBRA qualified plans. One of the biggest misconceptions since the law was introduced, were the qualifying plans that need to be offered. Most employers relate COBRA only to the medical plan; however, dental, vision, Section 125 and certain Employee Assistance Programs (EAP) services need to be offered.

Many employers have chosen to administer COBRA on their own, others have chosen to hire a qualified administrator. You may be surprised at how inexpensive a third-party COBRA administrator can be especially when related to the consequences of your company being fined from noncompliance. Your company should make it a practice to have an annual COBRA review because we are sure the 2004 change in regulations won't be the last. ★

### Q&A For Employers

**Question:** We are a small company of 40 employees. Do we have to mail the COBRA notices out, or can we simply physically hand them to our employees?

**Answer:** COBRA has two notice requirements: (1) an initial COBRA notice must be provided to an employee and spouse, if any, when they first become covered under the group health plan; and (2) a COBRA election notice must be provided to a covered employee and covered spouse, if any, when they have a qualifying event that results in a loss of coverage.

The U.S. Department of Labor (DOL) has indicated that the notices must be provided in a way that accurately informs both employees and spouses. Just handing out the notices to employees does not meet this goal.

What does meet the DOL's good faith compliance standard is a first class mailing to the last known mailing address of employees and their spouses. If they both live at the same address, a single mailing addressed to both the employee and spouse is sufficient. But if they both live at separate addresses, separate mailings must be made.

This doesn't necessarily prohibit an employer/plan administrator from handing out COBRA notices to employees. However, in such cases, separate mailings to covered spouses are necessary. (Because a spouse will elect on behalf of a dependent child, no separate notices for dependent children are necessary.)

And keep in mind that if notices are handed out (or mailed), sufficient procedures should be in place to document that the notices were provided.

For more information on COBRA, contact Mark Salvia at Hubbard Bert Karle Weber Inc. at 814/454-3633 or [salvia.m@hbkw.net](mailto:salvia.m@hbkw.net)