

forms to adequately reflect current practice and meet the needs of plan administrators, participants, and beneficiaries.

These proposed regulations establish minimum timing and content requirements for the required notices and set forth general rules for administering the COBRA notice process. The goal of this regulatory initiative is to create certainty and uniformity in this process, while also improving the consistency and quality of information provided to participants and beneficiaries about their COBRA rights. The Department believes that the proposed regulations, which would provide clear, uniform rules for the required notices, would make it easier for plans and employers to comply with COBRA notice requirements. The Department proposes to make these regulations, in their final form, effective and applicable as of the first day of the first plan year that occurs on or after January 1, 2004.

The Department notes that the Conference Report that accompanied COBRA states that "pending the promulgation of regulations, employers are required to operate in good faith compliance with a reasonable interpretation of these [COBRA] substantive rules, notice requirements, etc."¹² In the absence of final regulations, this continues to be the standard by which the Department will judge plan operations in this area. The publication of these proposed regulations should not be considered to relieve plan administrators of their obligation to meet this standard. In particular, the Department notes that, effective with publication of these proposed regulations, the Department will no longer consider use of the model general notice in ERISA Technical Release 86-2 (June 26, 1986) (TR 86-2) to be good faith compliance with the requirements of section 606(a)(1).¹³

¹² H.R. Conf. Rep. No. 99-453, at 563.

¹³ On June 26, 1986, the Department issued TR 86-2 to provide guidance to employers on the then newly enacted COBRA provisions. The Department provided, with TR 86-2, a model general notice to assist group health plans with the immediate necessity of providing a general notice by the effective date of COBRA, which came into force as of the beginning of the first plan year on or after July 1, 1986. The Department indicated that use of the model notice would be considered good faith compliance with the requirements of section 606(a)(1). The TR 86-2 model notice was intended to inform participants and beneficiaries, for the first time, of the passage of COBRA and educate them about the new COBRA rights. Because of the variety of subsequent statutory amendments, the TR 86-2 model notice no longer adequately reflects the COBRA provisions.

Section 2590.606-1 General Notice

Section 606(a)(1) requires each group health plan covered under COBRA to provide a written notice "at the time of commencement of coverage" to each covered employee and spouse (if any) of the employee. Proposed § 2590.606-1 establishes rules for both when this general notice must be provided and what information it must contain.

Paragraph (c) of the regulation sets forth the required minimum content of a general notice. These content requirements cover basic information regarding COBRA and the rights and responsibilities of qualified beneficiaries that a participant or beneficiary would need to know before the occurrence of a qualifying event in order to be able to protect his or her COBRA rights. In particular, paragraph (c) requires the general notice to describe the plan's requirements for notices that must be provided by qualified beneficiaries, such as the notice of a qualifying event involving divorce, separation, or a dependent's becoming no longer eligible for coverage as a dependent.

Paragraph (b) of the regulation establishes a 90-day period for the furnishing of the general notice, beginning with the date on which the covered employee or spouse first becomes covered under the plan. If the plan administrator must provide an election notice to the employee or to his or her spouse or dependent during the first 90 days of coverage, however, paragraph (b) requires the general notice to be provided at that earlier time. This provision protects participants and beneficiaries during the first 90 days of coverage by ensuring that they receive all of the information they need to understand their rights when the information is most necessary.

Paragraph (e) further permits plans to satisfy the general notice requirement by including the information described in paragraphs (c)(1), (2), (3), (4), and (5) in the summary plan description (SPD) of the plan and providing the SPD at a time that complies with the timing requirements for the general notice. The Department anticipates that many, and perhaps most, plans would prefer to take advantage of the reduced cost and added efficiency of providing a single disclosure document that satisfies both the general notice requirement and the SPD requirement. If a plan chooses to satisfy both disclosure obligations by furnishing a single document, the plan must ensure that the document satisfies both the general notice content

requirements and the SPD content requirements.¹⁴

Paragraph (f) provides that delivery of the general notice should be made in accordance with the standards of 29 CFR 2520.104b-1, including the standards for use of electronic media. Paragraph (d) permits delivery of a single notice addressed to a covered employee and the covered employee's spouse at their residence, provided the plan's latest information indicates that both reside at that address. A single notice would not be permitted, however, if a spouse's coverage under the plan begins at a different time from the covered employee's coverage, unless the spouse's coverage begins before the date on which the notice must be provided to the covered employee. Further, in-hand furnishing of the general notice at the workplace to a covered employee is deemed to be adequate delivery to the employee, although such delivery to the employee would not constitute delivery to the spouse.

The appendix to this section contains a model general notice that plan administrators may use to satisfy the content requirements of the regulation. The model general notice allows for inclusion of plan-specific information, including designation of the appropriate COBRA administrative contact and description of specific plan procedures, and provides alternatives to reflect the plan's practices regarding premium payment requirements, dates on which continuation coverage will begin, and whether bankruptcy could be a qualifying event under the specific plan. While the Department intends that use of an appropriately completed model notice, when finalized, would be considered compliance with the content requirements of the regulation, the Department does not intend to require its use and anticipates that a variety of other notices could satisfy the requirements of the regulation. The Department requests comment on whether the proposed model general notice adequately reflects current practice and provides plans with sufficient flexibility to describe individual plans' specific COBRA provisions.

Section 2590.606-2 Employer's Notice of Qualifying Event

Section 606(a)(2) requires an employer to provide notice to the plan administrator of a qualifying event that

¹⁴ The SPD content regulation, § 2520.102-3, specifies other information, in addition to description of COBRA rights, that must be included in an SPD for a group health plan. See, e.g., § 2520.102-3(j)(2), (3), (l).