

somewhat higher than the amount paid by the qualified beneficiary. This normally constitutes a subsidy of the continuation coverage by the plan sponsor. However, where qualified beneficiaries have lost the opportunity to elect the COBRA coverage to which they are entitled, they may bear the entire cost of their health care rather than the cost and administrative charge for group coverage. Averting the lost opportunity would result in a transfer of cost from the qualified beneficiary denied coverage to the plan sponsor that is equivalent to the subsidy, assuming the former participant or dependent is paying the entire cost of his or her health care.

The amount of this transfer is estimated at between \$12 million and \$24 million per year. In deriving this estimate, the Department observed that the number of inquiries the Department receives annually concerning COBRA, about 59,000, is equivalent to just more than 1 percent of the estimated 5 million annual COBRA qualifying events. It is likely that some but not all of these inquiries reflect notice inadequacies that these regulations would correct. The Department also noted that approximately 19 percent of qualifying events result in elections, and that the average subsidy from plan sponsors to COBRA enrollees amounts to about \$2,500. If between 0.5 percent and 1.0 percent of qualifying events involve missed opportunities due to inadequate notice, and 19 percent of those events would have resulted in elections, then the regulations would increase COBRA enrollees by between 4,750 and 9,500, increasing the aggregate subsidy by between \$12 million and \$24 million. Expressed in unit costs, for every one percent increase in the number of participants that were wrongfully denied continuation health coverage, there is an estimated incremental increase in cost of \$24 million to plan sponsors or approximately \$58 per plan.

The transfer cost, together with the \$2.4 million in administrative costs, is equal to only one-hundredth of 1 percent or less of total group health plan costs to companies subject to COBRA. Because the magnitude of the overall increase in costs to plans is small, the Department believes that it will not have a consequential effect on the availability of health coverage for employees, but welcomes comment on these assumptions.

Benefits—The benefits of these proposed rules will arise from improved administrative efficiency, reduced exposure to risk, and from the potential avoidance of some unnecessary losses of

group health plan coverage by otherwise qualified beneficiaries.

Inconsistent procedures, and notices that are not fully compliant as to content, timing, and form are known to generate questions, delays, disputes, and duplications of effort that require the expenditure of additional resources by both plan administrators and participants and beneficiaries to resolve. Although the magnitude of the costs and potential savings associated with administrative inefficiencies is unknown, clearer and more uniform standards should serve to avoid the otherwise unnecessary expense associated with rectifying procedural and substantive notice inadequacies.

Providing greater certainty to plan sponsors and plan administrators as to how their notice obligations can be met should also limit risks to both plans and qualified beneficiaries. Plan sponsors and plan administrators who comply with this guidance should be less likely to be subjected to costly disputes, litigation, or penalties as a result of their compliance with this guidance. Improvements in the consistency and quality of information provided to participants and dependents is expected to help them understand their rights and limit their risk of losing the opportunity to elect COBRA coverage.

The benefits of improved efficiency and reduced risk cannot be specifically quantified. The beneficial impact of preventing lost opportunities to elect continuation coverage can be estimated, however. The benefit to enrollees will exceed the financial value of the transfer insofar as the enrollees will gain access to high-value group coverage, rather than a choice between buying generally lower-value individual insurance or going without coverage altogether. Qualified beneficiaries who lose group health plan coverage due to inadequate notice may be faced with a choice between purchasing individual coverage at a rate significantly higher than a plan's group rate or going without coverage for a period of time. The uninsured bear the risk of catastrophic losses. They are also known to seek preventive care less frequently and to delay or forgo treatment, which may lead to less favorable health outcomes and higher social costs for acute care at a later time. Interruptions in group health plan coverage can ultimately limit the portability of group coverage, as well. A reduction of the numbers of losses of coverage that result from notification failures will also result in efficiency gains to the extent that the qualified beneficiaries elect group health plan coverage rather than individual coverage. Individual

coverage is more costly and less efficient due in large part to significantly higher costs of individual policy administration.

Alternatives—The Department gave thorough consideration to the need for guidance on the COBRA notice provisions and to the alternative forms that guidance might take. Being aware that most plan administrators and service providers make use of established forms and procedures, the Department did not wish to impose the costs likely to arise from reviews and changes to forms and procedures likely to result from the issuance of guidance unless it was actually valuable to plan administrators and qualified beneficiaries. Public comments received in response to the 1997 RFI, and information received from a range of interested parties by the Department in the conduct of its compliance assistance, outreach, and enforcement activities, however, persuaded the Department that guidance would be beneficial.

The Department also considered whether an informational booklet or question and answer publication rather than regulatory guidance would serve to provide the needed general information and address administrative complexities. Ultimately, the Department determined that while such publications might be helpful, they would not provide plan administrators with the certainty to meet their stated needs. Similarly, in its deliberations concerning the inclusion of model notices, the Department concluded that promulgation of models would encourage improved uniformity and information quality while providing greater certainty to plan administrators that their notices and procedures conform to the requirements of the statute. Because use of the models is voluntary, it is considered to provide this greater certainty without unnecessarily restricting plan administrators' continued use of existing notices and procedures that are appropriate as to content and timing.

Because the direct costs of this proposal arise from disclosure provisions, additional details concerning the data and assumptions used in developing these estimates may be found in the Paperwork Reduction Act section of this preamble. As required, the paperwork burden estimates include an analysis of the cost of the statutory provisions underlying these proposed regulations.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent