

## Compliance Corner: The Importance of the COBRA General Notice

CONEXIS

The COBRA general notice is a critical document because it discloses important continuation coverage rights and responsibilities. Specifically, this notice gives details about COBRA's provisions, including eligibility requirements, qualifying events, responsibility of notification, and a timeline for notification and payments. The general notice also informs employees and spouses of their responsibility to notify the employer<sup>1</sup> when they have a change of address, become legally separated or divorced, when a dependent loses dependent status under the plan, the occurrence of a second qualifying event, and a qualified beneficiary's determination of disability.<sup>2</sup>

<sup>1</sup> For purposes of this article, the term employer is used to represent the party responsible for COBRA administration. This may indeed be the employer but it may also be another party acting in the role of the plan administrator.

<sup>2</sup> For purposes of the 11-month disability extension. See Treas. Reg. §54.4980B-7, Q/A 5 for additional information.

## Large Employers Planning More Involvement in Workers' Healthcare Companies See Growth in Plans Linked to HSAs

*Business Insurance*

*JERRY GEISEL*

Big employers intend to get more involved in improving the health of their employees, according to a new survey.

Nearly two-thirds of the 448 employers surveyed by Lincolnshire, Ill.-based Hewitt Associates Inc. said they plan to get "much more involved" in their employees' health in the future, while just under one-third said they would maintain their current level of focus. None of the respondents said they would stop directly offering healthcare plans to their employees.

Employer involvement, in fact, already is on the rise. For example, 77% of respondents said they now have programs in place to analyze healthcare claims to determine the prevalence of chronic conditions, which is an increase from the 48% that had the programs in 2006. And 42% now have wellness programs, up from 35% in 2006.

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### COBRA in General

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amends sections of the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act (PHSA). COBRA requires group health plans to offer “each qualified beneficiary who would otherwise lose coverage under the plan as a result of a qualifying event an opportunity to elect, within the election period, continuation coverage under the plan.”<sup>3</sup>

Most employers are aware of COBRA. However, many employers have a limited understanding of COBRA’s provisions and notice requirements. This limited understanding often begins and ends with the loss of coverage that occurs when there is a qualifying event. In actuality, an employer’s notice requirements under COBRA begin when an employee, or an employee’s spouse, first becomes covered under a COBRA-eligible group health plan sponsored by the employer.

### The General Notice

Formerly known as the Initial Notice, the COBRA general notice provides an overview of COBRA’s rules and obligations, including the obligations placed on covered employees and their spouses. Generally, the notice must be provided to an employee and employee’s spouse when the employee or spouse first becomes covered under the employer’s plan.

### Content of the General Notice

Department of Labor (DOL) Regulations §§2590.606–1(c) 1 through 6 specify that the general notice must be written in such a manner that the notice can be understood by the average plan participant and must contain the following information:

- (1) The name of the plan under which continuation coverage is available, and the name, address and telephone number of a party or parties from whom additional information about the plan and continuation coverage can be obtained;
- (2) A general description of the continuation coverage under the plan, including identification of the classes of individuals who may become qualified

<sup>3</sup> Treas. Reg. §54.4980B-1, Q/A 1(a)

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beneficiaries, the types of qualifying events that may give rise to the right to continuation coverage, the obligation of the employer to notify the plan administrator of the occurrence of certain qualifying events, the maximum period for which continuation coverage may be available, when and under what circumstances continuation coverage may be extended beyond the applicable maximum period, and the plan's requirements applicable to the payment of premiums for continuation coverage;

- (3) An explanation of the plan's requirements regarding the responsibility of a qualified beneficiary to notify the administrator of a qualifying event that is a divorce, legal separation, or a child's ceasing to be a dependent under the terms of the plan, and a description of the plan's procedures for providing such notice;
- (4) An explanation of the plan's requirements regarding the responsibility of qualified beneficiaries who are receiving continuation coverage to provide notice to the administrator of a determination by the Social Security Administration, under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq. or 1381 et seq.), that a qualified beneficiary is disabled, and a description of the plan's procedures for providing such notice;

- (5) An explanation of the importance of keeping the administrator informed of the current addresses of all participants or beneficiaries under the plan who are or may become qualified beneficiaries; and
- (6) A statement that the notice does not fully describe continuation coverage or other rights under the plan and that more complete information regarding such rights is available from the plan administrator and in the plan's SPD.

### Timing of the COBRA General Notice

The general notice must be provided to "each employee and each employee's spouse,"<sup>4</sup> no later than the earlier of the following dates:

- The date that is 90 days after the date on which such individual's coverage under the plan commences, or, if later
- The date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or
- The first date on which the administrator is required, pursuant to § 2590.606-4(b), to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.<sup>5</sup>

<sup>4</sup> DOL Reg. §2590.606-1(b)(1)  
<sup>5</sup> DOL Reg. §2590.606-1(b)(1)

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### Delivery Method

The DOL 2004 final regulations<sup>6</sup> specify that the general notice “shall be delivered in a manner consistent with the requirements of §2520.104b-1 of this chapter, including paragraph (c) of that section relating to the use of electronic media.”<sup>7</sup> The distribution methods allowed under DOL Reg. §2520.104b-1 include hand delivery, first, second or third-class mail, and electronic distribution.

As noted above, the notice must be provided to both the employee and the employee’s spouse. Hand delivery of the notice to the employee does not constitute delivery to the employee’s spouse and is therefore not a generally recommended method for delivery of the notice.

Although electronic distribution of the general notice is permissible, the rules and requirements surrounding such distribution can be onerous and confusing and will prohibit many employers from employing such a delivery method.

Because of the difficulties and issues associated with hand delivery and electronic distribution

of the general notice, it is generally recommended that employers distribute the notice via standard mail. While distribution via second and third-class mail is permissible under the regulations, notices sent via these methods are subject to additional requirements<sup>8</sup> that can be bypassed by distributing the notice via first-class mail. Therefore, distribution of the notice via first-class mail is widely considered to be the preferred delivery method.

Employers may provide a single notice to the employee and spouse if the notice is addressed to both the employee and the employee’s spouse and “on the basis of the most recent information available to the plan, the covered employee’s spouse resides at the same location as the covered employee.”<sup>9</sup> A single notice may not be used if the spouse’s coverage begins after the employee’s coverage begins, unless the spouse’s coverage begins prior to the date the employer is required to provide the general notice to the employee.

Proof of distribution of the general notice is critical. Employers must develop policies and procedures that allow for the documentation and tracking of what was sent and to whom.

<sup>6</sup> See 29 CFR Part 2590, as published in the Federal Register on May 26, 2004 (69 Fed. Reg. 30083)  
<sup>7</sup> DOL Reg. §2590.606-1(f)

<sup>8</sup> See DOL Reg. §2520.104b-1(b)  
<sup>9</sup> DOL Reg. §2590.606-1(d)

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These procedures should, at a minimum, include a written policy that specifies the procedure for distributing the notices; copies of the actual notices sent; and proof of mailing or other distribution.

### The General Notice and the Summary Plan Description

Private-sector, non-governmental welfare benefit plans (including group health plans) must distribute a summary plan description (SPD) to each participant covered under the plan.<sup>10</sup> Under the DOL's COBRA regulations, employers are permitted to satisfy the general notice requirement by distributing an SPD that meets the following criteria:

- the SPD meets the DOL's SPD requirements;
- the SPD includes all of the information that must be included in the general notice; and
- the SPD is distributed to covered employees and covered spouses in accordance with the distribution rules and timelines established within the regulations

It is important to note that following the SPD distribution rules will not satisfy COBRA's

requirements for distribution of the general notice. Under DOL regulations, the SPD is required to be distributed only to the participant.<sup>11</sup> As discussed above, the COBRA general notice must be provided to both the covered employee and the covered spouse. Providing the SPD only to the employee does not satisfy the notification requirement with respect to the employee's spouse.

### Consequences of Failing to Deliver the General Notice

Because the COBRA General Notice outlines COBRA's rules and obligations, including the employee's and the employee's spouse's obligations under COBRA, it is critical that employers provide an accurate and complete notice to all employees and their spouses within the appropriate timeframes. Failure to provide the notice can lead to severe penalties under the Code and ERISA, including non-notification penalties of up to \$110 per day.

Perhaps more significantly, failure to provide the general notice prohibits employers from enforcing the employee's and employee's spouse's obligations under COBRA. The inability to enforce these obligations can lead

<sup>10</sup> DOL Reg. §2520.104b-2(a)(1)

<sup>11</sup> DOL Reg. §2520.104b-2(a)

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to significant issues. For example, when the qualifying event is divorce, the employee or his former spouse must notify the plan administrator within 60 days of the occurrence of the event.<sup>12</sup> However, if the employer failed to provide the general notice to the divorced spouse, the employer will not be able to deny coverage when notice of the divorce is provided, even if the 60-day period has expired. In such a scenario, the employer could find itself in the position of self-funding coverage for the divorced spouse or worse, facing a lawsuit for medical claims, attorney's fees, and non-notification penalties.

### Correcting a Mistake

Failure to provide the COBRA general notice is, unfortunately, quite common. As discussed above, failure to provide the general notice can lead to significant consequences. Employers that have failed to provide the notice to covered employees and their covered spouses should immediately distribute the notice to these individuals and establish policies to ensure the notice is properly distributed to all newly covered employees and spouses in the future. 🚫

12 Measured from the later of the date of the qualifying event or the loss of coverage. See Treas. Reg. §54.4980B-6, Q(A)-2(a)

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Additionally, employers expect enrollment – now very low – in health savings accounts (HSA) linked to high-deductible health insurance plans to surge.

For example, while respondents said just 3% of eligible employees were enrolled in HSA-linked plans in 2006, they expect this percentage to quadruple by 2009, with 20% of employees enrolled in HSAs by 2011. 🚫

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# It's All About the Consumer

## NewsRxBiotech

Empowering consumers to make appropriate choices was the overall theme of the Managed Care Executive Group's (MCEG) annual meeting held in Palm Desert, California. This theme shaped the definitive Top Ten issues list the group produces each year. Mary Wilkins, senior vice president of National Accounts for CIGNA, set the stage during her keynote speech saying consumers need help to make "effective and personal choices that matter." MCEG members noted a significant shift towards priorities that work with consumers to make these choices.


1. **Consumer-Focus Products.** To move from a group level to an individual level requires an enormous amount of resources. New health plan products featuring choice, customization, and direct involvement by individual members will drive IT investment toward personalized processes. Consumers desire more choices. The level of complexity rises for both IT and customer service information. Figuring out how to support this complexity is an immediate priority for us this year.
2. **Providing Transparency to Health Plan Data and Operations.** HIPAA led the way through standardization of electronic transactions and portability of certain plan features. Transparency in other health plan functions, such as simplified adjudication, provider payment/contracting, employer/purchaser reporting, and member account management will be made possible through new advances in automation.
3. **Electronic Health Records (EHR).** Health plan-based EHRs bring together data from electronic medical records from encounters across the health system. Personal Health Records (PHRs) give individuals control over key medical information.
4. **Collaboration with Providers as a Business Partnership.** Prior authorization and utilization reviews are fading, and in their place is a more collaborative model based on access, quality, safety, effectiveness and patient centeredness. Pay for Performance (P4P) is holding providers accountable, stressing bridges to excellence.
5. **The Role of State and Federal Government in Healthcare.** Government support, intervention and regulation are having increasing impact on payer's operations, costs and even marketplace strategies. The importance of electronic health information technology in reforming the U.S. healthcare system is evident in the *President's 4 Cornerstones* initiative.

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6. **Impacts and Movement to Service Oriented Architecture (SOA).** SOA doesn't just change the architecture; it improves the service delivery platform as well. Complex and highly regulated health plan processes may appear resistant to change, but lack of coordination and duplication in member contact services are raising a call to action.
7. **Web Enablement.** As healthcare follows the path of banking and online shopping, strategic health plan Web sites, which can include sales automation, self-service and information transparency can be a competitive advantage and open new access to improved wellness.
8. **Business and IT Collaboration.** Organizations that have moved information technology from a back room automation tool to a strategy enabling platform will shift the payer marketplaces similar to the consumer shifts that have taken place from bricks and mortar stores to online sales.
9. **Health Data Exchanges.** RHIOs (Regional Health Information Organizations) and others are moving from concept to reality.
10. **Database/Warehousing Expansion.** Dealing with the enormous database expansion

required for a true consumer-centric health plan of the future requires planning, strategic investment, and advances in knowledge management. 

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### Comment Newsletter



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## Employers Identify Key Wellness and Employee Education Initiatives

*PR Newswire Europe*

Nearly all employers, regardless of size or industry, have a clear interest in expanding initiatives to help employees manage their personal health more effectively, both as a means to lower plan costs and to have a more stable, productive workforce, according to results released from United Benefit Advisors' (UBA) 2007 Employer Survey. The annual survey polls employers as to the extent and effectiveness of their current and planned wellness and disease management programs, the range of employee benefits offered, the various employee communications strategies in place or contemplated, and employers' wish lists for future initiatives in these critical areas.

"This year's survey corroborated last year's key finding that there are far fewer differences in either current or desired services among employers in different industry groups or with differing numbers of employees than was commonly assumed," said David LoCascio, UBA's Co-Founder. "The increasing applicability of Web-based solutions and the growing sophistication of benefits advisors has leveled the playing field, allowing employers of all sizes to have access to tools and services that were previously available only to large employers."

There were also striking similarities regarding the items that dominated employers' wish lists for the future, with between 30% to 50% of all employers hoping to add:

- Employee decision support tools (projected employee out-of-pocket costs for various plans offered, projected total costs for a given condition, tax implications of FSA or HSA contributions, etc.)
- Formal wellness and disease management programs
- Cost and quality information for hospitals, physicians, and prescription drugs
- Early-warning tools to identify chronic conditions and potentially serious claims
- Online enrollment/employee self-service

The adoption of personal health management strategies by employers of all sizes continues to increase. Roughly 25% of all employers currently provide various wellness and/or health risk assessment programs, and an additional 50% of employers would like to add

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such programs in the future. In addition, employers now overwhelmingly believe there should be a difference in benefits and/or costs based on an employee's involvement in managing any chronic conditions.

"Employer involvement in helping to manage the health of its workforce has been rapidly gaining momentum," said LoCascio. "The old approach of simply hoping for good claims experience has not worked, and employers are increasingly assuming more responsibility and control in an effort to impact both plan costs and employee productivity."

Employers are also placing a greater emphasis on educating employees as to the reasons for plan changes and on how they can help improve their health and reduce the cost of their health plans. Survey findings in this area include:

- 73% of all employers think employees can become better healthcare consumers if given the tools to do so (provider cost and quality information, employer-based education on how to manage costs, employee decision support tools, etc.), significantly more than the 53% who feel that plan design changes (High Deductible plans, increased co-insurance, etc.) will make better consumers.

- Employee education initiatives also extend to retirement plans with more than 50% of all employers now providing employees with in-person consultations with financial professionals regarding their retirement savings and investment options.

"Employers of all sizes have seen that proactive health management programs and effective employee communication can have a notable direct impact on plan costs," said LoCascio. "Employees have a huge vested interest in helping contain costs in order to both stem the erosion in plan benefits and their share of higher premium costs; and most are willing and able to do so if provided the tools and information required." 🚫

*The results are based on the responses of 1,746 employers comprising a representative cross-section of companies across all industry groups, various employee size categories, and regions of the country.*

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