PWBA Office of Regulations and Interpretations

Advisory Opinion

November 10, 1999

Mr. Pieter J. Doerr
COBRA Compliance Systems, Inc.
15 E. Washington Street
P.O. Box 889
Coldwater, Michigan 49036-0889

99-14A
ERISA SEC.
606

Dear Mr. Doerr:

This is in reply to your request for an advisory opinion regarding the continuation coverage provisions applicable to group health plans under Part 6 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Under Part 6, which was added to ERISA by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), group health plans are required to offer temporary extension of health coverage (called "COBRA continuation coverage") at group rates to employees, spouses and dependent children in certain instances where their coverage under the plan would otherwise end.[1] Section 606(a)(1) of Title I of ERISA provides that the covered employee and his or her covered spouse must receive a notice informing them of their COBRA rights and describing certain provisions of the law (the "Initial Notice") at the time they commence coverage under a group health plan subject to Part 6. Section 606 (a)(4) provides that, upon the occurrence of a qualifying event described in section 603, the plan administrator must give covered employees, spouses and dependent children who are qualified beneficiaries a specific notice of their right to elect COBRA coverage as a result of that event (the "Election Notice"). The type of qualifying event will determine who the qualified beneficiaries are and the required amount of time that a plan must offer continuation coverage to them under COBRA. Pending the issuance of regulations under these COBRA notice provisions, employers and plan administrators are required to operate in good faith compliance with a reasonable interpretation of the statutory provisions. See H.R. Rep. No. 99-453, 99th Congr., 1st Sess. at 563 (Dec. 18, 1985).

You note that in ERISA Technical Release 86-2 (issued June 26, 1986), the Department stated that where the spouse's last known address is the same as the covered employee's, it would consider that an employer or plan administrator has made a good faith effort at compliance with ERISA § 606(a)(1) if the Initial Notice is given through a single mailing by first class mail addressed to both the covered employee and the covered spouse. You ask whether the Department will consider a single mailing addressed to the covered employee, his or her spouse, and dependent children (if any) residing at the same address at the time of the notification to be good faith compliance with the Election Notice requirements of ERISA § 606(a)(4).

It is the Department's position that ERISA § 606(a)(4) gives each qualified beneficiary a separate right to receive a written Election Notice upon the occurrence of a qualifying event permitting him or her to exercise COBRA continuation rights. This requirement may, in some cases, be met by mailing one Election Notice where more than one qualified beneficiary resides at the same address. Where, at the time of the notification, the last known addresses of the covered employee, his or her spouse, and dependent children (if any) are the same, the Department will consider a

single first class mailing addressed to the covered employee, his or her spouse, and dependent children (if any) to be good faith compliance with the Election Notice requirements of ERISA § 606(a)(4) in the absence of regulations provided that a separate election notice for each qualified beneficiary is included in the single mailing or, if a single notice is sent, it clearly identifies the qualified beneficiaries covered by the notice and clearly explains the separate and independent right each has to elect COBRA continuation coverage. This letter addresses the factual situation presented in your letter and should not be read as indicating the only way a single mailing may be used to satisfy the Election Notice requirements where more than one qualified beneficiary resides at the same address. See, e.g., ERISA § 606(c).

This letter constitutes an advisory opinion under ERISA Procedure 76-1, 41 Fed. Reg. 36281 (1976). Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

John J. Canary
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations

[1] The COBRA amendments added substantially similar provisions to the Internal Revenue Code and the Public Health Service Act. The Internal Revenue Service, the Department of Health and Human Services, and the Department of Labor each has certain regulatory authority in this area. See H.R. Rep. No. 99-453, 99th Congr., 1st Sess. at 562-563 (Dec. 18, 1985). The COBRA provisions in Part 6 generally apply to group health plans covered by Title I of ERISA, but they do not apply to a "group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year." ERISA § 601(b). COBRA also applies to group health plans sponsored by state and local governments, but those provisions are administered by the U.S. Public Health Service within the Department of Health and Human Services.