

The regulations state that “procedures” are “reasonable” if they meet the following requirements:

- The procedures are set forth in the SPD;
- The procedures designate an individual or entity to receive requests for extended COBRA coverage;
- The procedures specify the methods by which requests should be made; and
- The procedures specify the information that should be included with the employee’s request (for example, copies of Social Security Disability determinations).

Constangy recommends that employers insert this information into the Model Initial Notice in the section entitled “Disability

Extension” and “Second Qualifying Event Extension,” and (as discussed above) inserting the Model Initial Notice into the SPD.

**... AND NOW, FOR SOMETHING COMPLETELY DIFFERENT ...**

**HIPAA Redux.** Since HIPAA’s privacy rules went into effect for large plans on April 14, 2003, several issues have arisen that may be of general interest:

- Plan administrators do NOT have to maintain records of protected health information (“PHI”) that is provided pursuant to an authorization. Employees are not entitled to an accounting of information disclosed pursuant to an authorization. Therefore, the plan administrator need only maintain a copy of the authorization.

- When requesting bids from insurers, it is lawful for plans to disclose PHI. However, the plan must (1) get the insurer’s prior agreement that the insurer will not use the information for any purpose other than the bid, and (2) make only disclosures of PHI that are necessary for such a purpose.
- A patient’s PHI may lawfully be used by a health care provider when necessary for internal discipline of its employees (for example, in cases of substandard care or patient abuse).

*If you have questions about these or any other benefits issues, please contact any member of our Employee Benefits group: Ira Friedrich at (404) 230-6714, Dana Thrasher at (205) 252-9321, Carl Cannon at (404) 230-6717, or Andrea Bailey at (404) 230-6728.*

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## COBRA REARS ITS HEAD. But Don't Recoil—The Changes Are Very Do-able.

The U.S. Department of Labor ("DOL") recently issued proposed regulations that will require employers to change certain procedures related to COBRA continuation coverage. The changes will be effective for plan years beginning on or after January 1, 2004. The regulations address several topics, each of which is discussed in detail below.

**Initial Notice.** The DOL has revised the Initial Notice given to employees and their spouses. The new Model Notice can be downloaded from Constangy's website at <http://www.constangy.com>. The Model Notice is designed for single-employer plans and will have to be "customized" to reflect the individual provisions of the applicable plans.

The Model Notice (with any necessary customization) must be provided to BOTH the employee AND the employee's spouse within 90 days of their coverage. This unfortunately means that hand-delivery of the summary plan description ("SPD") to a married employee does not satisfy the notice requirements. (Hand-delivery to unmarried participants remains acceptable.)

The regulations allow the Model Notice to be included in the employer's SPD or provided as a "standalone." However, because employers are also required to distribute SPD's, Constangy recommends that employers add the Model Notice to the SPD and then mail the SPD to the last known

address of the employee and spouse. This will allow employers to satisfy their COBRA notice and SPD distribution requirements at the same time. Employers who elect to provide the new COBRA notice as a standalone should mail the standalone to the last known address of the employee and spouse.

*(While employers are updating SPD's to include the new COBRA notice, they should also make sure that their SPD's comply with the new claims procedures, the privacy requirements of the Health Insurance Portability and Accountability Act ("HIPAA"), and the new provisions regarding the Statement of ERISA Rights.)*

**Election Form.** The DOL has also issued a Model Election Form that can be used by qualified beneficiaries to elect COBRA continuation coverage. The Model Form contains all of the reasons that could potentially entitle a qualified beneficiary to COBRA continuation coverage. Currently, many employers use separate election forms for each qualifying event, so the new form should simplify matters. The Model Form is also available at Constangy's website. Please note that the Model Form contains blanks that need to be filled in and optional language that must be selected.

The Model Form also contains an explanation of the COBRA rights of employees who lose their jobs (and medical coverage) due to international trade agreements making them eligible for trade adjustment assistance. Employers

may delete these provisions if their business is not likely to be adversely affected by international trade agreements.

**Notice of Early Termination of COBRA Coverage.** Plan administrators will be required to notify qualified beneficiaries whenever their COBRA coverage terminates early—for example, when a qualified beneficiary becomes covered under a new employer's plan. In such circumstances, the regulations require that the plan administrator notify the qualified beneficiary of the following:

- The date that the coverage ended;
- The reason that the coverage ended; and
- Any rights that the qualified beneficiary may have to alternate group or conversion coverage.

The notice should be provided "as soon as practicable" after coverage terminates and may be mailed to the last known address of the employee, the employee's spouse, and the employee's dependent children.

**"Reasonable procedures" for disability extensions and second qualifying events.** Plans are required to adopt "reasonable procedures" for processing requests from qualified beneficiaries for the extension of continuation coverage due to a disability or second qualifying event. *Plans that do not comply by the deadline will be required to provide extended COBRA coverage based only on an employee's oral notice to any officer of the company.*