



April 29, 1994

Mr. David A. Snouffer  
Willcox & Savage, PC  
1800 Nations Bank center  
One Commercial Place  
Norfolk, Virginia 23510-2197

94-17A  
ERISA SEC.  
606(a)(1)

Dear Mr. Snouffer:

This is in reply to your request concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Your request concerns group health plans that are subject to the requirements of part 6 of Title I of ERISA respecting the provision of continuation coverage under such group health plans to employees and their beneficiaries (the continuation coverage provisions). Specifically you ask whether, in complying with the notice requirement imposed by section 606(a)(1) of ERISA, such group health plans must provide the required notice not only to the covered employee, but also, in all cases, to the spouse of such employee, regardless of whether the spouse is covered under the group health plan.

The continuation coverage provisions generally require group health plans to offer a continuation of coverage for a specified period to certain individuals (qualified beneficiaries) who otherwise lose coverage under the plan upon the occurrence of certain specified events (qualifying events). When a qualifying event occurs, and any of the qualified beneficiaries would otherwise lose coverage, the plan generally must permit the affected qualified beneficiary to elect continuation coverage, for which the plan may charge the qualified beneficiary not more than a specified premium amount. The qualified beneficiaries include the covered employee and the employee's spouse and dependent children, if covered as beneficiaries under the plan on the day before the qualifying event occurs.

Because the exercise of the rights granted by the continuation coverage provisions is governed by strict time deadlines, the continuation coverage provisions impose a series of interlocking notice requirements. See ERISA section 606. These notice requirements permit the plan, the employer, and the qualified beneficiaries to stay informed, in a timely fashion, of the rights provided and the duties imposed by the continuation coverage provisions. At issue in your request is the initial notice requirement imposed by section 606(a)(1), which requires that:

a. the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

Inasmuch as section 606(a)(1) provides for the furnishing of the initial notice at the time of commencement of coverage under the plan, the statutory notice requirement does not arise unless and until the employee becomes a participant covered under the plan and, in the case of a spouse, the spouse becomes a beneficiary under the plan.<sup>1</sup> The statute's purpose is generally to require plans to permit qualified beneficiaries to elect continuation coverage. The initial notice serves to alert an individual, who may at some future time become entitled to elect continuation coverage, of the rights he or she will have at that future date. This purpose would not be served by requiring that notice be given to a person who cannot become entitled to this election as a qualified beneficiary, for example, to a spouse who is not eligible for coverage under the plan.

It is the view of the Department of Labor, therefore, that the initial notice required by section 606(a)(1) must be given to an employee's spouse only if, and at the time, the spouse commences coverage under the plan.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and, accordingly, is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions. This letter relates solely to application of the provisions of Title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Code.

Sincerely,

Robert J. Doyle  
Director, Regulations and Interpretations

<sup>1</sup> See 29 CFR 2510.3-3(d)(1) (defining when an individual becomes a participant covered under a welfare plan) and ERISA section 3(7) (defining the term beneficiary).