



September 14, 1995

FMLA-71

Dear *Name**,

This is in response to your letter of June 20, 1995, addressed to *Name** about the Certification of Health Care Provider under the Family and Medical Leave Act of 1993 (FMLA). You state your concerns that this medical certificate, optional form WH-380, is cumbersome, requests confidential and sensitive information about the patient's health condition, and you will not be compensated for its completion.

In enacting FMLA, Congress found inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods of time and a lack of employment policies to accommodate working parents that forces individuals to choose between job security and parenting. Congress stated that the purposes of FMLA are to balance the demands of the workplace with the needs of families and to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition. Congress also intended that the legitimate interests of the employer must be accommodated in implementing FMLA.

Section 103 of FMLA provides that the "employer may require that a request for leave" due to a serious health condition "be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate." This provision was designed as a check against employee abuse. The FMLA specifically provides that such certification may include:

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- (4)(A) for purpose of leave [for the care of an immediate family member] a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and
- (4)(B) for purposes of leave [for the employee's own serious health condition] a statement that the employee is unable to perform the functions of the position of the employee.

Under FMLA, the term serious health condition is intended to cover conditions or illnesses affecting one's (or the immediate family member's) health to the extent that inpatient care is required, or absences are necessary on a recurring basis or for more than a few days for treatment or recovery. This term is not intended to cover short-term conditions for which treatment and recovery are very brief as such conditions would generally be covered by the employer's sick leave policies.

The purpose of the medical certificate is to allow employers to obtain information from a health care provider to verify that an employee, or the employee's family member, has a serious health condition, the likely periods of absences, and general information regarding the regimen of treatment (e.g., prescription drugs). The medical certificate has been designed to be consistent with the Americans With Disabilities Act (ADA) and privacy concerns in that all of the information on the form must relate only to the condition for which the employee is taking FMLA leave.

The first two pages of the medical certificate cover the actual certification of the existence of a serious health condition. Pages three and four are really an attachment to the medical certificate and provide a useful guide for defining serious health condition under FMLA. The design of this form was intended to be



helpful to the health care provider in requiring certification as to which aspect of FMLA's serious health condition definition applies and the medical facts to support the definition. It is also noted that only brief statements are required to respond to requested information to complete the certification.

The FMLA does not require health care providers to complete medical certificates. Failure of an employee to provide a medical certification to substantiate the need for FMLA leave for a serious health condition may, however, jeopardize the employee's job and group health insurance coverage as FMLA benefits and protection cannot apply to a leave of absence where the employee is unable to provide the requested certificate.

While we appreciate your concerns in this matter, we have attempted to develop a form that is not overly cumbersome, time consuming, or costly to complete and yet satisfies the requirements of FMLA as well as the needs of employees and employers. How you would obtain compensation for completing this medical certification would, of course, be between you and your customers as this issue was not addressed in FMLA.

For your information, we are enclosing copies of the fact sheet that summarizes FMLA's provisions, the printed version of the medical certificate, and section 825.114 of Regulations, 29 CFR Part 825, which provides a complete discussion of the definition of serious health condition under this law.

If we may of further assistance to you, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

Enclosures

cc: Senator John Glenn

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*