WHAT YOU NEED TO KNOW

Extension of Maximum COBRA Coverage Period

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers to offer covered employees who lose their health benefits due to a qualifying event to continue group health benefits for a limited time at the employee's own cost. The length of the COBRA coverage period depends on the qualifying event and is usually 18 or 36 months. However, the COBRA coverage period may be extended under the five circumstances listed below.

1. Multiple Qualifying Events

The maximum coverage period for a loss of coverage due to a termination of employment and reduction of hours is 18 months. The maximum coverage period may be extended to 36 months if a second qualifying event or multiple qualifying events occur within the initial 18 months of COBRA coverage from the first qualifying event. The coverage period runs from the start of the original 18-month coverage period.

The first qualifying event must be termination of employment or reduction of hours, but the second qualifying cannot be termination of employment, reduction of hours, or bankruptcy. In order to qualify for the extension, the second qualifying event must be the covered employee's death, divorce, or child ceasing to be a dependent. In addition, the extension is only available if the second qualifying event would have caused a loss of coverage for the qualified beneficiary if it occurred first.

The extended 36-month period is only for spouses and dependent children. In order to qualify for extended coverage, a qualified beneficiary must have elected COBRA during the first qualifying event and must have been receiving COBRA coverage at the time of the second event. The qualified beneficiary must notify the plan administrator of the second qualifying event within 60 days after the event.

> *Example:* Jim was terminated on June 3, 2017. Then, he got divorced on July 6, 2017. Jim was eligible for COBRA continuation coverage for 18 months after his termination of employment (the first qualifying event). However, his divorce (the second qualifying event) extended his COBRA continuation coverage to 36 months because it occurred within the initial 18 months of COBRA coverage from his termination (the first qualifying event).

The health plan should indicate when the coverage period begins. The plan may provide that that the plan administrator be notified when plan coverage is lost as opposed to when the qualifying event occurs. In that case, the 36-month coverage period would begin on the date coverage was lost.

2. Disability

A disability extends the 18-month continuation coverage period to 29 months for all qualified beneficiaries. A qualified beneficiary who experiences a qualifying event (termination of employment or reduction of hours) and is disabled at any time during the first 60 days of continuation coverage may qualify for an additional 11 months of COBRA continuation coverage.

To qualify for the extension, the qualified beneficiary must obtain a ruling from the Social Security Administration indicating the disability determination occurred within the first 60 days of COBRA continuation coverage and send a copy of the ruling letter to the plan administrator before the 18-month coverage period ends and within 60 days after the latest of:

- The disability determination date
- The qualifying event date
- The date when the qualified beneficiary loses plan coverage
- The date when the qualified beneficiary is informed of the obligation to provide notice

The notice limits are statutory minimums. The regulations allow plans to adopt longer notice periods.

The 29-month coverage period allows a disabled qualified beneficiary to remain on COBRA until becoming entitled to Medicare. Generally, a disabled individual under the Social Security Act is entitled to Medicare after 24 months of receiving disability benefits. Thus, the disability extension prevents a gap between COBRA coverage and Medicare entitlement. However, if the disabled qualified beneficiary ceases to be disabled during the disability extension period, then COBRA coverage may be terminated before the 29-month extended coverage period ends.

After the original maximum COBRA coverage period, the plan may increase the premium for the disabled qualified beneficiary and charge 150 percent of the applicable premium as opposed to the usual 102 percent.

However, the plan may not increase the premium for the disabled qualified beneficiary if the disabled qualified beneficiary is entitled to extended coverage for reasons other than disability, such as a second qualifying event, and if the second qualifying event occurs within the original maximum coverage period.

> *Example:* Jane and her husband Bob are covered by Jane's group health plan. Jane's hours are significantly reduced and Bob elects COBRA coverage for the original 18-month coverage period. Bob applies for disability benefits through the Social Security Administration (SSA). After Bob receives 10 months of COBRA coverage, he receives an SSA disability determination letter that indicates his disability existed within the first 60 days of his COBRA coverage. Thus, he is eligible for the 29-month disability extension. Then, Jane dies within the 18-month coverage and Bob notifies the plan administrator within 60 days. Bob is entitled to 36 months of COBRA continuation coverage due to the second qualifying event and the plan cannot increase Bob's premium during this time.

The disability extension will end at the earlier of:

- The last day of the month, 30 days after Social Security has determined that the qualified beneficiary is no longer disabled.
- The end of 29 months from the date of the COBRA Qualifying Event.
- The date the disabled individual becomes entitled to Medicare.

3. Extended Notice Rule

The extended notice rule allows the maximum coverage period to run from the date of the loss of coverage as opposed to the date of the triggering event if the employer notifies the plan administrator within 30 days after the loss of coverage. Thus, the maximum coverage period begins when coverage is lost.

In order to take advantage of the extended rule, plan documents should include the following information: (1) that the maximum coverage period begins when coverage ends, and (2) that the plan administrator must be notified of the qualifying event 30 days after coverage ends. If the plan does not provide these changes, then the 18-month COBRA coverage will begin from the date of the triggering event.

The extended notice rule has the effect of extending the maximum coverage period because it extends the employer's notice period and delays the start of the coverage period.

4. Pre-Termination or Pre-Reduction Medicare Entitlement

Individuals become entitled to Medicare when they are eligible and enroll in Medicare Part A or Parts A and B. The mere fact that an individual is *eligible* to enroll in Medicare does not mean the individual is *entitled* to Medicare.

COBRA continuation coverage may be extended for the covered employee's spouse and children if the qualifying event (termination of employment or reduction of hours) that results in a loss of plan coverage occurs within 18 months after the covered employee becomes entitled to Medicare. The 36-month extension applies regardless of whether the covered employee's Medicare entitlement is a qualifying event. The employee's retirement date is an important factor in determining the length of the COBRA coverage period. If an employee retires a day before becoming entitled to Medicare, then the spouse and dependent children are not entitled to an extension and will only receive an 18-month maximum coverage period.

> *Example:* Tom and his wife Sarah are covered under Tom's group health plan. Tom became entitled to Medicare on June 10, 2014, and retired on June 10, 2017. Tom's retirement results in a loss of plan coverage for Tom and Sarah. Tom elects COBRA coverage for himself and his wife; however, Sarah is only entitled to 18 months from the date Tom retired because Tom's Medicare entitlement occurred more than 18 months before the qualifying event (Tom's retirement/termination of employment).

5. Employer Extension; Employer Bankruptcy

An employer may extend the maximum COBRA continuation coverage period beyond the 18 or 36 months required by law. The employer should specify in the COBRA policy when coverage will be extended.

While the bankruptcy rule is not an extending rule, it is included in this guide because it results in longer coverage than the average 18 or 36 months.

An employer's Chapter 11 bankruptcy can be a triggering event for retirees and their spouses as well as dependent children who lose coverage within the 12 months before or after the date on which bankruptcy proceedings begin as long as the employer continues to offer a health plan to employees. For retirees who retired on or before the bankruptcy filing, the retirees receive lifetime COBRA coverage. The covered retiree's spouse and dependent children can elect up to 36 months of coverage after the retiree's death. Extended COBRA coverage due to the bankruptcy qualifying event may not be terminated because of Medicare entitlement.

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