

PART 6—CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

§ 1161. Plans must provide continuation coverage to certain individuals

(a) In general

The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) shall not apply to any 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.

(Pub. L. 93-406, title I, § 601, as added Pub. L. 99-272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 227; amended Pub. L. 101-239, title VII, §§ 7862(c)(1)(B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2432, 2445.)

Editorial Notes

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 struck out at end “Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of title 26 (relating to employers under common control) shall apply for purposes of this subsection.”

Pub. L. 101-239, § 7891(a)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(c)(1)(B) of Pub. L. 101-239 applicable to years beginning after Dec. 31, 1986, see section 7862(c)(1)(C) of Pub. L. 101-239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE

Pub. L. 99-272, title X, § 10002(d), Apr. 7, 1986, 100 Stat. 231, provided that:

“(1) GENERAL RULE.—The amendments made by this section [enacting this part and amending section 1132 of this title] shall apply to plan years beginning on or after July 1, 1986.

“(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

“(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

“(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement re-

lating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.”

§ 1162. Continuation coverage

For purposes of section 1161 of this title, the term “continuation coverage” means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours

In the case of a qualifying event described in section 1163(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events

If a qualifying event (other than a qualifying event described in section 1163(6) of this title) occurs during the 18 months after the date of a qualifying event described in section 1163(2) of this title, the date which is 36 months after the date of the qualifying event described in section 1163(2) of this title.

(iii) Special rule for certain bankruptcy proceedings

In the case of a qualifying event described in section 1163(6) of this title (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 1167(3)(C)(iii) of this title), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events

In the case of a qualifying event not described in section 1163(2) or 1163(6) of this title, the date which is 36 months after the date of the qualifying event.

(v) Special rule for PBGC recipients

In the case of a qualifying event described in section 1163(2) of this title with

respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under subchapter III, notwithstanding clause (i) or (ii), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(vi) Special rule for TAA-eligible individuals

In the case of a qualifying event described in section 1163(2) of this title with respect to a covered employee who is (as of the date that the period of coverage would, but for this clause or clause (vii), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 1165(b)(4)(B) of this title), the period of coverage shall not terminate by reason of clause (i) or (ii), as the case may be, before the later of the date specified in such clause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(vii) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in section 1163(2) of this title that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

(viii) Special rule for disability

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part, any reference in clause (i) or (ii) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 1166(3)¹ of this title before the end of such 18 months.

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make time-

ly payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of this subtitle, or title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.]), or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title, entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this part, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of paragraph (2)(A),² any reference in subparagraph (A) of this paragraph to “102 percent” is deemed a reference to “150 percent” for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under

¹ See References in Text note below.

² See References in Text note below.

paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(Pub. L. 93-406, title I, § 602, as added Pub. L. 99-272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 228; amended Pub. L. 99-509, title IX, § 9501(b)(1)(B), (2)(B), Oct. 21, 1986, 100 Stat. 2076, 2077; Pub. L. 99-514, title XVIII, § 1895(d)(1)(B), (2)(B), (3)(B), (4)(B), Oct. 22, 1986, 100 Stat. 2936-2938; Pub. L. 101-239, title VI, § 6703(a), (b), title VII, §§ 7862(c)(3)(B), (4)(A), (5)(B), 7871(c), Dec. 19, 1989, 103 Stat. 2296, 2432, 2433, 2435; Pub. L. 104-188, title I, § 1704(g)(1)(B), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 104-191, title IV, § 421(b)(1), Aug. 21, 1996, 110 Stat. 2088; Pub. L. 111-5, div. B, title I, § 1899F(a), Feb. 17, 2009, 123 Stat. 428; Pub. L. 111-344, title I, § 116(a), Dec. 29, 2010, 124 Stat. 3615; Pub. L. 112-40, title II, § 243(a)(1), (2), Oct. 21, 2011, 125 Stat. 420.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A)(vii), (viii), (D)(ii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1166(3) of this title, referred to in par. (2)(A)(viii), was redesignated as section 1166(a)(3) of this title by Pub. L. 101-239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

The Public Health Service Act, referred to in par. (2)(D)(i), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§ 300gg et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The last sentence of paragraph (2)(A), referred to in par. (3), probably means par. (2)(A)(viii) of this section, which was originally enacted as the concluding provisions of par. (2)(A) and subsequently designated as cl. (vi) and redesignated as cl. (viii) of par. (2)(A) by Pub. L. 111-5, div. B, title I, § 1899F(a)(2), (3), Feb. 17, 2009, 123 Stat. 428.

AMENDMENTS

2011—Par. (2)(A)(v), (vi). Pub. L. 112-40 substituted “January 1, 2014” for “February 12, 2011”.

2010—Par. (2)(A)(v), (vi). Pub. L. 111-344 substituted “February 12, 2011” for “December 31, 2010”.

2009—Par. (2)(A)(v). Pub. L. 111-5, § 1899F(a)(3), added cl. (v). Former cl. (v) redesignated (vii).

Pub. L. 111-5, § 1899F(a)(1), transferred cl. (v) to appear after cl. (iv). See 1989 Amendment note below.

Par. (2)(A)(vi). Pub. L. 111-5, § 1899F(a)(3), added cl. (vi). Former cl. (vi) redesignated (viii).

Pub. L. 111-5, § 1899F(a)(2), designated concluding provisions as cl. (vi) and inserted heading.

Par. (2)(A)(vii), (viii). Pub. L. 111-5, § 1899F(a)(3), redesignated cls. (v) and (vi) as (vii) and (viii), respectively.

1996—Par. (2)(A). Pub. L. 104-191, § 421(b)(1)(A), in closing provisions, substituted “In the case of a qualified beneficiary” for “In the case of an individual” and “at any time during the first 60 days of continuation coverage under this part” for “at the time of a qualifying event described in section 1163(2) of this title”, struck out “with respect to such event” after “(ii) to 18 months”, and inserted “(with respect to all qualified beneficiaries)” after “29 months”.

Par. (2)(A)(v). Pub. L. 104-188 amended cl. (v) generally. Prior to amendment, cl. (v) read as follows:

“(v) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in section 1163(4) of this title (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.”

Par. (2)(D)(i). Pub. L. 104-191, § 421(b)(1)(B), inserted “(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of this subtitle, or title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.])” before “, or” at end.

Par. (2)(E). Pub. L. 104-191, § 421(b)(1)(C), substituted “at any time during the first 60 days of continuation coverage under this part” for “at the time of a qualifying event described in section 1163(2) of this title”.

1989—Par. (2)(A). Pub. L. 101-239, § 6703(a)(1), inserted after and below cl. (iv) “In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 1163(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 1166(3) of this title before the end of such 18 months.”

Par. (2)(A)(iii). Pub. L. 101-239, § 7871(c), substituted “described in section 1163(6)” for “described in 1163(6)”.

Par. (2)(A)(v). Pub. L. 101-239, § 7862(c)(5)(B), added cl. (v) after concluding provisions inserted by Pub. L. 101-239, § 6703(a)(1). See above.

Par. (2)(D). Pub. L. 101-239, § 7862(c)(3)(B), substituted “entitlement” for “eligibility” in heading and inserted “which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary” after “or otherwise” in cl. (i).

Par. (2)(E). Pub. L. 101-239, § 6703(a)(2), added subpar. (E).

Par. (3). Pub. L. 101-239, § 7862(c)(4)(A), which directed substitution of “In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.” for last sentence of par. (3), was executed by making the substitution for the following sentence: “If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.”, notwithstanding the sentence added at the end of par. (3) by Pub. L. 101-239, § 6703(b).

Pub. L. 101-239, § 6703(b), inserted at end “In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to ‘102 percent’ is deemed a reference to ‘150 percent’ for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).”

1986—Par. (1). Pub. L. 99-514, § 1895(d)(1)(B), inserted “If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.”

Par. (2)(A). Pub. L. 99-514, § 1895(d)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

“(A) MAXIMUM PERIOD.—In the case of—

“(i) a qualifying event described in section 1163(2) of this title (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

“(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.”

Par. (2)(A)(ii). Pub. L. 99-509, §9501(b)(1)(B)(i), inserted “(other than a qualifying event described in section 1163(6) of this title)”.

Par. (2)(A)(iii). Pub. L. 99-509, §9501(b)(1)(B)(iv), added cl. (iii). Former cl. (iii) redesignated (iv).

Par. (2)(A)(iv). Pub. L. 99-509, §9501(b)(1)(B)(ii), (iii), redesignated cl. (iii) as (iv) and inserted “or 1163(6)”.

Par. (2)(C). Pub. L. 99-514, §1895(d)(3)(B), inserted “The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.”

Par. (2)(D). Pub. L. 99-514, §1895(d)(4)(B)(ii), (iii), substituted “Group health plan coverage or medicare eligibility” for “Reemployment or medicare eligibility” as heading and substituted “covered under any other group health plan (as an employee or otherwise)” for “a covered employee under any other group health plan” in cl. (i).

Par. (2)(D)(ii). Pub. L. 99-509, §9501(b)(2)(B), inserted “in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title” before “entitled”.

Par. (2)(E). Pub. L. 99-514, §1895(d)(4)(B)(i), struck out subpar. (E), remarriage of spouse, which read as follows: “In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-40 applicable to periods of coverage which would (without regard to the amendments made by section 243 of Pub. L. 112-40) end on or after the date which is 30 days after Oct. 21, 2011, see section 243(b) of Pub. L. 112-40, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-344 applicable to periods of coverage which would (without regard to such amendment) end on or after Dec. 31, 2010, see section 116(d) of Pub. L. 111-344, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Amendment by Pub. L. 111-5 applicable to periods of coverage which would (without regard to amendment by Pub. L. 111-5) end on or after Feb. 17, 2009, see section 1899F(d) of Pub. L. 111-5, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-191 effective Jan. 1, 1997, regardless of whether qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104-191 set out as a note under section 4980B of Title 26, Internal Revenue Code.

Amendment by Pub. L. 104-188 applicable to plan years beginning after Dec. 31, 1989, see section 1704(g)(2) of Pub. L. 104-188, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VI, §6703(d), Dec. 19, 1989, 103 Stat. 2296, provided that: “The amendments made by this section [amending this section and section 1166 of this title] shall apply to plan years beginning on or

after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.”

Amendment by section 7862(c)(3)(B) of Pub. L. 101-239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 7862(c)(4)(A) of Pub. L. 101-239 applicable to plan years beginning after Dec. 31, 1989, see section 7862(c)(4)(C) of Pub. L. 101-239, set out as a note under section 4980B of Title 26.

Amendment by section 7862(c)(5)(B) of Pub. L. 101-239 applicable to plan years beginning after Dec. 31, 1989, see section 7862(c)(5)(C) of Pub. L. 101-239, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 1895(e) of Pub. L. 99-514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99-509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 9501(e) of Pub. L. 99-509, set out as a note under section 162 of Title 26.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1163. Qualifying event

For purposes of this part, the term “qualifying event” means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.

(3) The divorce or legal separation of the covered employee from the employee’s spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(6) A proceeding in a case under title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 1167(3)(C) of this title within one year before or after the date of commencement of the proceeding.

(Pub. L. 93-406, title I, §603, as added Pub. L. 99-272, title X, §10002(a), Apr. 7, 1986, 100 Stat.