

(Pub. L. 93–406, title I, § 604, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229.)

### § 1165. Election

#### (a) In general

For purposes of this part—

##### (1) Election period

The term “election period” means the period which—

- (A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,
- (B) is of at least 60 days’ duration, and
- (C) ends not earlier than 60 days after the later of—
  - (i) the date described in subparagraph (A), or
  - (ii) in the case of any qualified beneficiary who receives notice under section 1166(4)<sup>1</sup> of this title, the date of such notice.

##### (2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 1167(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

#### (b) Temporary extension of COBRA election period for certain individuals

##### (1) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a), such individual may elect continuation coverage under this part during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

##### (2) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

##### (3) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

- (A) beginning on the date of the TAA-related loss of coverage, and
- (B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in sec-

tion 1181(c)(2) of this title, section 2701(c)(2) of the Public Health Service Act,<sup>1</sup> and section 9801(c)(2) of title 26.

#### (4) Definitions

For purposes of this subsection:

##### (A) Nonelecting TAA-eligible individual

The term “nonelecting TAA-eligible individual” means a TAA-eligible individual who—

- (i) has a TAA-related loss of coverage; and
- (ii) did not elect continuation coverage under this part during the TAA-related election period.

##### (B) TAA-eligible individual

The term “TAA-eligible individual” means—

- (i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of title 26), and
- (ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

##### (C) TAA-related election period

The term “TAA-related election period” means, with respect to a TAA-related loss of coverage, the 60-day election period under this part which is a direct consequence of such loss.

##### (D) TAA-related loss of coverage

The term “TAA-related loss of coverage” means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(Pub. L. 93–406, title I, § 605, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99–514, title XVIII, § 1895(d)(5)(B), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 107–210, div. A, title II, § 203(e)(1), Aug. 6, 2002, 116 Stat. 969.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 1166(4) of this title, referred to in subsec. (a)(1)(C)(ii), was redesignated as section 1166(a)(4) of this title by Pub. L. 101–239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

Section 2701 of the Public Health Service Act, referred to in subsec. (b)(3), was classified to section 300gg of Title 42, The Public Health and Welfare, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§ 1201(2), 1563(c)(1), formerly § 1562(c)(1), title X, § 10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of Title 42. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111–148, title I, § 1201(4), title X, § 10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of Title 42.

#### AMENDMENTS

2002—Pub. L. 107–210 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1986—Par. (2). Pub. L. 99–514 inserted “of continuation coverage” after “any election” and inserted at end “If there is a choice among types of coverage under the

<sup>1</sup> See References in Text note below.

plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage."

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as a note preceding section 2271 of Title 19.

##### EFFECTIVE DATE OF 1986 AMENDMENT

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.

##### CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107-210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107-210, set out as a Construction note under section 35 of Title 26, Internal Revenue Code.

##### 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, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### § 1166. Notice requirements

##### (a) In general

In accordance with regulations prescribed by the Secretary—

(1) 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,

(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 1163 of this title within 60 days after the date of the qualifying event and each 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 is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of

any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 1163 of this title where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

##### (b) Alternative means of compliance with requirements for notification of multiemployer plans by employers

The requirements of subsection (a)(2) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 1163 of this title if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.

##### (c) Rules relating to notification of qualified beneficiaries by plan administrator

For purposes of subsection (a)(4), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(Pub. L. 93-406, title I, §606, as added Pub. L. 99-272, title X, §10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99-509, title IX, §9501(d)(2), Oct. 21, 1986, 100 Stat. 2077; Pub. L. 99-514, title XVIII, §1895(d)(6)(B), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 101-239, title VI, §6703(c), title VII, §7891(d)(1)(A), Dec. 19, 1989, 103 Stat. 2296, 2445; Pub. L. 104-191, title IV, §421(b)(2), Aug. 21, 1996, 110 Stat. 2088.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 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.

##### AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-191 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—Pub. L. 101-239, §7891(d)(1)(A)(ii), designated first sentence as subsec. (a), added subsec. (b), designated second sentence as subsec. (c), and substituted