

“(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 relating 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.”

§ 300bb-2. Continuation coverage

For purposes of section 300bb-1 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 part¹ 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 300bb-3(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 occurs during the 18 months after the date of a qualifying event described in section 300bb-3(2) of this title, the date which is 36 months after the date of the qualifying event described in section 300bb-3(2) of this title.

(iii) General rule for other qualifying events

In the case of a qualifying event not described in section 300bb-3(2) of this title, the date which is 36 months after the date of the qualifying event.

(iv) Special rule for TAA-eligible individuals

In the case of a qualifying event described in section 300bb-3(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 (v), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 300bb-5(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.

(v) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in section 300bb-3(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.

(vi) 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 subchapter, 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 300bb-6(3) 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 timely 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

¹ So in original. This subchapter is not divided into parts.

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 subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], or subchapter XXV of this chapter), or

(ii) 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 subchapter, 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.² 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).

(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 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.

(July 1, 1944, ch. 373, title XXII, §2202, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 233; amended Pub. L. 99-514, title XVIII, §1895(d)(1)(C), (2)(C), (3)(C), (4)(C), Oct. 22, 1986, 100 Stat. 2937-2939; Pub. L. 101-239, title VI, §§6702(a), (b), 6801(b)(1)(A), (2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2295, 2297; Pub. L. 104-188, title I, §1704(g)(1)(C), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 104-191, title IV, §421(a)(1), Aug. 21, 1996, 110 Stat. 2087; Pub. L. 111-5, div. B, title I, §1899F(c),

Feb. 17, 2009, 123 Stat. 429; Pub. L. 111-344, title I, §116(c), Dec. 29, 2010, 124 Stat. 3616; Pub. L. 112-40, title II, §243(a)(5), Oct. 21, 2011, 125 Stat. 420.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A)(v), (vi), (D)(ii), and (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 this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in par. (2)(D)(i), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

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

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

2009—Par. (2)(A). Pub. L. 111-5, §1899F(c)(1), designated concluding provisions as cl. (v) and inserted heading.

Par. (2)(A)(iv) to (vi). Pub. L. 111-5, §1899F(c)(2), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

1996—Par. (2)(A). Pub. L. 104-191, §421(a)(1)(A)(ii)(IV), inserted “(with respect to all qualified beneficiaries)” after “29 months” in concluding provisions.

Pub. L. 104-191, §421(a)(1)(A)(ii)(III), which directed amendment of concluding provisions by striking “with respect to such event,”, was executed by striking that phrase, which did not contain a comma at end, before “is deemed a reference” to reflect the probable intent of Congress.

Pub. L. 104-191, §421(a)(1)(A)(ii)(I), (II), in concluding provisions, substituted “a qualified beneficiary” for “an individual” and “at any time during the first 60 days of continuation coverage under this subchapter” for “at the time of a qualifying event described in section 300bb-3(2) of this title”.

Pub. L. 104-191, §421(a)(1)(A)(i), transferred sentence following cl. (iii) to appear as concluding provisions following cl. (iv).

Par. (2)(A)(iv). Pub. L. 104-188 amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: “In the case of an event described in section 300bb-3(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(a)(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 subtitle B of title I of the Employee Retirement Income Security Act of 1974, or subchapter XXV of this chapter)” before “, or”.

Par. (2)(E). Pub. L. 104-191, §421(a)(1)(C), substituted “at any time during the first 60 days of continuation coverage under this subchapter” for “at the time of a qualifying event described in section 300bb-3(2) of this title”.

1989—Par. (2)(A). Pub. L. 101-239, §6702(a)(1), inserted after cl. (iii) “In the case of an individual who is deter-

² See 1989 Amendment note below.

mined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb-3(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 300bb-6(3) of this title before the end of such 18 months.”

Par. (2)(A)(iv). Pub. L. 101-239, § 6801(b)(1)(A), added cl. (iv).

Par. (2)(D). Pub. L. 101-239, § 6801(b)(2)(A), 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, § 6702(a)(2), added subpar. (E).

Par. (3). Pub. L. 101-239, § 6801(b)(3)(A), which directed the general amendment of the concluding provision was executed by amending the first sentence of the concluding provision generally to reflect the probable intent of Congress and amendment of concluding provision by Pub. L. 101-239, § 6702(b). Prior to amendment, first sentence of the concluding provision read as follows: “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.”

Pub. L. 101-239, § 6702(b), inserted at end of concluding provision “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).” See Amendment note above.

1986—Par. (1). Pub. L. 99-514, § 1895(d)(1)(C), inserted at end “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)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “MAXIMUM PERIOD.—In the case of—

“(i) a qualifying event described in section 300bb-3(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)(C). Pub. L. 99-514, § 1895(d)(3)(C), inserted at end “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)(C)(ii), (iii), substituted “Group health plan coverage” for “Reemployment” in heading, added cl. (i), and struck out former cl. (i) which read as follows: “a covered employee under any other group health plan, or”.

Par. (2)(E). Pub. L. 99-514, § 1895(d)(4)(C)(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 the 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, § 6702(d), 103 Stat. 2296, provided that: “The amendments made by this section [amending this section and section 300bb-6 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.”

Pub. L. 101-239, title VI, § 6801(b)(1)(B), 103 Stat. 2297, provided that: “The amendments made by this paragraph [amending this section] shall apply to plan years beginning after December 31, 1989.”

Pub. L. 101-239, title VI, § 6801(b)(2)(B), 103 Stat. 2297, provided that: “The amendments made by subparagraph (A) [amending this section] shall apply to—

“(i) qualifying events occurring after December 31, 1989, and

“(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).”

Pub. L. 101-239, title VI, § 6801(b)(3)(B), 103 Stat. 2297, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to plan years beginning after December 31, 1989.”

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.

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.

§ 300bb-3. Qualifying event

For purposes of this subchapter, 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 subchapter, 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.

(July 1, 1944, ch. 373, title XXII, §2203, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 234.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300bb-4. Applicable premium

For purposes of this subchapter—

(1) In general

The term “applicable premium” means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

- (i) is determined on an actuarial basis, and
- (ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If a plan administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

- (i) the cost to the plan for similarly situated beneficiaries for the same period oc-

curing during the preceding determination period under paragraph (3), adjusted by

- (ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

A plan administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(July 1, 1944, ch. 373, title XXII, §2204, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 234.)

§ 300bb-5. Election**(a) In general**

For purposes of this subchapter—

(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 300bb-6(4) 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 300bb-8(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),