

# COBRA Tips®

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## COBRA & Medicare

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The following is an excerpt from [Questions and Answers from the COBRA Help Desk – Part I](#):

**Client:** A former employee and his spouse elected COBRA after losing coverage because of his non-FMLA leave of absence. Their COBRA coverage started on 8/01/2004. On 10/1/2005 the former employee became entitled to Medicare A & B. I have terminated his COBRA coverage because of the Medicare entitlement. It is my understanding that his spouse is now entitled to continue her coverage for a total of 36 months from the start of COBRA. Is that correct? (COBRA OnQue® did not automatically create the extension.)

**OnQue:** It appears that the spouse is not eligible to receive the extension to 36 months, because a second qualifying event has not occurred. You are correct in your understanding that the COBRA statute identifies Medicare entitlement of a former employee as a second qualifying event for the covered spouse and dependent children. However, on February 13, 2004, the Internal Revenue Service issued Revenue Ruling 2004-22, which effectively eliminated the possibility of a COBRA beneficiary being qualified for that extension. (To review the details of that ruling, please refer to OnQue's COBRA Tip, [IRS Rules COBRA Not Extended After Medicare Entitlement](#).)

In a nutshell, the ruling states that if the eligibility rules do not require the plan to drop an active employee from coverage when he/she becomes entitled to Medicare, then COBRA covered dependents are likewise ineligible to receive an extension of coverage as a result of the former employee's Medicare entitlement. And, because the law prohibits plans from using Medicare entitlement as a reason to drop an employee's coverage in the first place, the revenue ruling effectively eliminates Medicare entitlement as a second qualifying event.

There are, however, two cases in which an employee's Medicare entitlement may be a first (initial) qualifying event, which means that such entitlement would also be a second qualifying event under COBRA.

**Multiemployer Plans:** Medicare's Secondary Payer rules provide an exception that can be elected by multiemployer plans. That exception applies to employer members having fewer than 20 employees; it permits multiemployer plans to provide that employees and their dependents will be ineligible for coverage when the employee becomes entitled to Medicare due to age. Provided the multiemployer plan is subject to COBRA, that loss of coverage would be considered a first qualifying event for the covered spouse and dependent children.

**Small Employer Exemption:** The second case occurs when an employer is exempt from the Medicare Secondary Payer rules because it has fewer than 20 employees in the current year, but is still subject to COBRA because it had 20 or more employees in the previous year. In such cases, an active employee's Medicare entitlement will be a

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COBRA qualifying event, provided it results in a loss of coverage under the terms of the group health plan.

According to the IRS ruling, because an active employee's Medicare entitlement results in a first qualifying event under these scenarios, a former employee's Medicare entitlement qualifies as a second qualifying event for the COBRA-covered spouse and dependent children.

Unless your company is exempt from the Medicare Secondary Payer rules because it falls into one of the two categories described above, a second qualifying event did not occur when the former employee became entitled to Medicare. Thus, the spouse is not entitled to an extension of COBRA continuation coverage.

## Related COBRA Tips

- [IRS Rules COBRA Not Extended After Medicare Entitlement](#)
- [Medicare's Effect on COBRA](#)

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