

Medicare's Effect on COBRA

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The interaction of Medicare and COBRA results in some rather complex and frequently misunderstood rules regarding COBRA administration. This COBRA Tip first presents a short course on Medicare's basic rules, then explains how those rules impact COBRA administration.

Medicare: The Short Course for COBRA Administrators

To fully understand how Medicare affects COBRA administration, we must first understand 3 key concepts:

1. Medicare Parts A and B;
2. Medicare entitlement: what it is and how it works; and,
3. Medicare Secondary Payer Rules.

Medicare Part A and Part B

Medicare Part A covers hospital benefits and is generally free to those individuals who qualify and enroll when first eligible. Individuals who are not fully qualified through Social Security or the Railroad Retirement Act can purchase Part A from Social Security.

Medicare Part B covers physicians, lab and x-ray, nursing, plus other eligible health care expenses. Individuals enrolling in Medicare Part B are required to pay a monthly premium.

Medicare Entitlement

The concept of Medicare "entitlement" is frequently misunderstood by employers and employees alike. To be entitled to Medicare, the following conditions must be true:

- the individual is eligible for Medicare benefits;
- the individual has taken the steps required to enroll in the program; and
- the enrollment in Medicare Part A or Part B has become effective.

One may become entitled to Medicare Part A because of his or her age, disability, or End Stage Renal Disease (ESRD). Entitlement is automatic if the individual has already applied to receive monthly retirement benefits from Social Security or the Railroad Retirement Board. If the individual has not applied for retirement benefits, an application must be filed to receive Part A benefits.

Entitlement Due to Age

An eligible individual is entitled to Part A benefits if he or she has attained age 65 and files the appropriate application, if necessary. Entitlement based on age begins on the first of the month in which the individual has met his or her requirements for entitlement. If the individual applies for Social Security income benefits before their 65th birthday, the

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entitlement date is the first of the month that he or she attains age 65. If the birthday falls on the first of the month, the Medicare entitlement date is the first of the previous month.

Entitlement Due to Disability

An individual is entitled to Medicare Part A benefits if he or she is under age 65, and has been entitled to disability income benefits under Social Security or the Railroad Retirement Act for more than 24 months. Because eligibility to receive disability income payments requires a 5-month waiting period, an individual will have to wait a total of 29 months before receiving Medicare benefits.

Entitlement Due to End-Stage Renal Disease (ESRD)

Individuals who have ESRD—irreversible and permanent kidney impairment that requires regular dialysis or a kidney transplant—are entitled to Part A benefits. They must also file the required application and satisfy any required waiting period.

Entitlement to Medicare Part B

Entitlement in Medicare Part B is automatic if the individual enrolls in Medicare Part A, lives in the United States, and does not decline the automatic enrollment that occurs at the time that they enroll in Medicare Part A.

Medicare Secondary Payer (MSP) Rules

These rules generally prohibit a group health plan from taking Medicare into account, and dictate the order of claim paying responsibility for medical expenses when both a group health plan and Medicare insure a person. The MSP rules cover Medicare entitlement based on age, disability, and ESRD:

- Businesses with fewer than 20 employees are exempt from age-based MSP rules that require a group health plan to be the primary claim payer. The 20-employee test is based on each working day in at least 20 weeks during either the current or the preceding calendar year. This test is run as of the date the individual receives medical services.
- Businesses with fewer than 100 employees on at least 50% of its regular business days during the previous calendar year are exempt from disability-based MSP rules that require a group health plan to be the primary claim payer.
- When Medicare entitlement is based on ESRD, Medicare is usually considered the secondary payer for up to the first 30 months of coverage. However, if an individual is first entitled to Medicare based on age or disability and then later becomes eligible for ESRD-based Medicare, Medicare will remain the primary payer of benefits.

The purpose of the MSP rules is to shift the financial burden for medical expenses to business and away from the federal government.

Medicare's Effect on COBRA

Medicare entitlement may be a qualifying event. According to the COBRA statute, when an employee loses health coverage because of a Medicare entitlement, it is considered a qualifying event for the employee's covered spouse and dependent children. However, because of Medicare's Secondary Payer Rules, which generally

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prohibit an employer's group health plan from taking Medicare entitlement into account or terminating coverage because of Medicare, this situation will rarely result in an initial COBRA qualifying event.

Medicare entitlement may be a second qualifying event. Because of the MSP rules, an employee or former employee's Medicare entitlement will rarely be a second qualifying event extending COBRA coverage for a spouse or child. According to a recent IRS ruling, a second qualifying event under COBRA must meet the same basic requirements as an initial qualifying event; the event would have to cause a loss of coverage under the health plan, had it occurred while the employee was still covered under the plan before COBRA coverage went into effect.

Medicare entitlement may cause termination of COBRA coverage. When a qualified beneficiary's Medicare entitlement occurs after he elects COBRA, the plan may terminate his COBRA coverage on the date of the Medicare entitlement.

What happens when Medicare entitlement is followed by a qualifying event? When an employee is entitled to Medicare, then loses coverage due to termination or reduction of hours, the employee's covered spouse or dependent child may extend coverage under COBRA up to a maximum of 36 months from the date of the employee's Medicare entitlement. The employee, however, is restricted to a maximum of 18 months.

Not enrolling in Medicare before COBRA terminates can have negative consequences. Although qualified beneficiaries are not required to enroll in Medicare Part A or B, it may be in their best interest to do so before COBRA coverage terminates for the following reasons:

- If an individual does not elect Medicare Part A and B while covered or during the 8-month special enrollment period following the loss of group health coverage, the monthly premium cost will increase an additional 10% for every 12-month period past the initial enrollment period.
- If an individual does not enroll in Medicare Part A or B coverage before the end of the 8-month special open enrollment period, he or she will not be able to enroll until the next regular Medicare annual open enrollment period (January 1, through March 31 each year) and their coverage entitlement date will not begin until July 1 of that same year. Consequently, an individual who loses COBRA coverage may have to wait up to 15 months before Medicare Part A or B becomes effective. For example, if an individual is eligible but has not enrolled in Medicare Part A or B and loses COBRA coverage on April 1, Medicare coverage would not be effective until July 1 of the following year.

In addition to helping covered individuals understand their coverage rights, it is also in the employer's best interest to encourage enrollment in Medicare Part A and Part B because Medicare will usually be the primary claim payer during COBRA continuation coverage.

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When an individual is covered by COBRA and Medicare, which plan is the primary claim payer? When Medicare entitlement is based on age or disability, Medicare is considered the primary claim payer for individuals covered under COBRA. However, COBRA does not change the MSP rules for persons entitled to Medicare entitlement due to ESRD.

Medicare entitlement rules are the reason for COBRA's 11-month disability extension. Medicare imposes a 29-month period before benefits are available to an individual deemed disabled by the Social Security Administration (the 5-month waiting period before benefits begin, plus the 24-month disability income benefit period). This Medicare rule is the reason COBRA coverage may be extended up to a total maximum of 29-months when a qualified beneficiary family member is disabled. Because of this rule, an individual disabled at the start of COBRA will have seamless coverage between COBRA and Medicare.

Conclusion

Employers often forget that they have another employee medical plan that they are contributing to each pay period called Medicare, and that plan needs to be coordinated with any other medical plans offered by the employer. Business with 20 or more employees must be especially careful because of Medicare's interaction with COBRA.

Material contained in COBRA Tips should not be construed as legal advice. If legal advice or other professional assistance is required, the services of a professional competent in COBRA and in related federal and state laws should be sought.