

## Publications

# Top 5 Most Important Rules to Remember About the Interaction Between COBRA and Medicare

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The COBRA rules and Medicare rules are complex on their own. Navigating the interaction between the rules is even more complex and can lead to an inadvertent compliance issue. Given today's highly litigious COBRA world and the increase in DOL participant COBRA complaints, it is even more important than ever to have an understanding of these provisions and how they work together. Below we outline the five most important rules to remember about the interaction between COBRA and Medicare.

## 1. Entitlement Means Enrollment

The COBRA rules refer to Medicare "entitlement." Many people would interpret this to mean the date the individual becomes eligible for Medicare (generally, age 65[1]). But, the IRS has made it clear that "entitlement" means the effective date of enrollment, not the date of eligibility.

## 2. The Effective Date of Medicare is Key, Not the Application Date

Thus, the effective date of Medicare is the relevant date, not the date when the employee applies for Medicare. This is important because the effective date of Medicare can be retroactive. Specifically, the effective date of Part A is generally the first day of the month in which the individual turns age 65, as long as the individual applies within 6 months after the month in which he/she turns age 65. If he/she applies more than 6 months after the month in which he/she turns age 65, then Part A is effective retroactive to the 6<sup>th</sup> month before the month of application (e.g., an application filed in July is effective in the preceding January).

### 3. Medicare Enrollment Before (But Not On or After) Termination of Employment/Reduction in Hours Extends COBRA

If an employee terminates employment or has a reduction in hours less than 18 months after the date of his/her Medicare entitlement, the spouse/dependent child can elect up to 36 months of COBRA coverage (measured from the date of Medicare enrollment). The employee can only elect up to 18 months of COBRA coverage, however.

If the employee, spouse, or dependent child enrolls in COBRA on or after the termination of employment/reduction in hours but on or before the date that he/she elects COBRA, he/she can elect up to 18 months of COBRA coverage.

### 4. Medicare Enrollment is Almost Never Actually a Qualifying Event

Under the statute and regulations, Medicare enrollment can be a qualifying event for the employee, spouse, and dependent child and can be a second qualifying event for the spouse and dependent child. However, to be a qualifying event, the Medicare enrollment must result in a loss of coverage. And, the employee's Medicare enrollment can only be a second qualifying event if it would have caused a loss of coverage for the spouse or dependent children under the plan. Due to the Medicare Secondary Payer (MSP) rules (which generally apply employers with 20 or more employees), an active employee's enrollment in Medicare will not result in a loss of coverage. Thus, for active plans, Medicare enrollment will not be a qualifying event or a second qualifying event.

However, the MSP rules do not apply with respect to retirees. Thus, the Medicare enrollment of a retiree can be a qualifying event for a spouse or dependent child if it results in him/her losing eligibility for retiree medical coverage. This is most relevant for pre-65 retiree medical plans where the family loses coverage once the retiree turns age 65.

### 5. Medicare Enrollment After COBRA Enrollment Can End COBRA Early for that Person Only

When any qualified beneficiary enrolls in Medicare after electing COBRA coverage, his/her COBRA coverage can be terminated early. However, his/her Medicare enrollment does not end COBRA coverage for the other qualified beneficiaries in the family who do not elect Medicare.

### Quick Reference Guide

| Employee's Medicare Effective Date  | Impact on Employee's COBRA      | Impact on Spouse/Dependent Child's COBRA   |
|---|---------------------------------|--|
| 18 months or more before employment termination/reduction in hours date                   | None – up to 18 months of COBRA | None – up to 18 months of COBRA  |
| Less than 18 months before employment termination/reduction in hours date                 | None – up to 18 months of COBRA | Up to 36 months of COBRA (measured from Medicare effective date)                         |
| On employment termination/reduction in hours date   | None – up to 18 months of COBRA | None – up to 18 months of COBRA  |
| After employment termination/reduction in hours date and on or before COBRA election date | None – up to 18 months of COBRA | None – up to 18 months of COBRA  |
| After COBRA election date   | COBRA ends early                | None – up to 18 months of COBRA (unless retiree coverage, then up to 36 months of COBRA) |