

IRS REVENUE RULING 2004-22 SECONDARY QUALIFYING EVENTS

(Effective date: retroactive to 1985 enactment of COBRA)

The IRS released Revenue Ruling 2004-22 on 2/13/2004 to address inquiries from the Department of Health and Human Services relating to proper interpretation of Medicare Entitlement as a secondary qualifying event under COBRA. As an interpretation of existing COBRA law, the ruling is effective on the date COBRA was enacted.

The ruling provides three criteria that must be met for a second qualifying event to result in an extension of the maximum COBRA period to 36 months:

1. The individuals involved must have been qualified beneficiaries in relation to an employee's termination of employment or reduction in hours of employment;
2. The individuals must be qualified beneficiaries at the time the second event occurs; and
3. The second event must be a qualifying event that would have resulted in a loss of coverage for the individuals if they were still covered as an active employee or dependent under the plan.

While the application of the criteria applies to all secondary qualifying event situations, its most direct impact is on Medicare Entitlement, as shown in the following examples.

EXAMPLE 1

Family A's coverage under a group health plan was ended due to the employee's termination of employment. The employee elects COBRA continuation for the family for a period of 18 months. Ten months later the employee dies. This is a second qualifying event resulting in an extension of COBRA to 36 months for the spouse and dependent children. The employee's death would have resulted in a loss of coverage for the spouse and children if it had occurred while they were still covered by the plan as dependents of an active employee.

EXAMPLE 2

Family B's coverage under a group health plan was ended due to the employee's retirement. The employee elects COBRA continuation for himself and his spouse for a period of 18 months. Six months later the employee turns 65 and is covered by Medicare. This is not a second qualifying event and would not result in an extension of COBRA to 36 months for the spouse. The employee turning 65 and being covered by Medicare would not have resulted in a loss of coverage for the spouse if it had occurred while the spouse was still covered under the plan as the dependent of an active employee. Medicare Secondary Payer laws prohibit terminating group health coverage due to the existence of Medicare coverage or attainment of age 65.

Please note: Medicare Entitlement prior to a qualifying event of employment termination or reduction in hours is addressed separately in the COBRA statute. Therefore, it will still result in a qualified beneficiary being eligible for the greater of 36 months from the date of Medicare Entitlement or 18 months from the date of employment termination or reduction in hours. As a result, while the spouse of an employee who retires after age 65 is still eligible for 36 months of COBRA from the date the employee was entitled to Medicare, the spouse of an employee who retires prior to age 65 will only be eligible for 18 months of COBRA.