

COMPLIANCE OVERVIEW

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COBRA Rules for Medicare Beneficiaries

As older Americans—those who are age 65 and older—continue to stay in the workforce, employers will need to understand how an employee's entitlement to Medicare impacts eligibility under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The following COBRA rules apply to Medicare beneficiaries:

- ✓ In most situations, group health plans are prohibited from terminating coverage due to an employee's Medicare entitlement.
- ✓ The maximum COBRA period may be extended for spouses and dependent children if the employee retires after becoming entitled to Medicare.
- ✓ A qualified beneficiary who becomes entitled to Medicare before electing COBRA is still eligible for COBRA. But, COBRA coverage may be terminated early if a qualified beneficiary becomes entitled to Medicare after electing COBRA.

LINKS AND RESOURCES

- [An Employer's Guide to Group Health Plan Continuation Coverage Under COBRA](#), a Department of Labor (DOL) publication
- [Medicare & You](#), an online connection to the Medicare handbook for individuals
- [Who Pays First](#), a guide from the Centers for Medicare and Medicaid Services (CMS)

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

MEDICARE ENTITLEMENT

- An employee is entitled to Medicare when he or she is both eligible and enrolled in the Medicare program.
- Medicare begins automatically at age 65 for individuals who are receiving Social Security benefits.

QUALIFYING EVENT

- Medicare entitlement is rarely a qualifying event (or a second qualifying event) due to the Medicare Secondary Payer (MSP) rules.
- The MSP rules prevent most employers from terminating group health plan coverage based on an employee's Medicare entitlement.
- Although Medicare entitlement is not a qualifying event, it may extend the maximum COBRA period for family members in some situations.



MEDICARE COVERAGE – GENERAL RULES

Generally, Medicare is available for people **age 65 or older**, younger people with **disabilities** and people with **end-stage renal disease (ESRD)**, which is a permanent kidney failure requiring dialysis or a transplant. Medicare’s eligibility rules work as follows:

Age	An individual is entitled to Medicare benefits based on age if he or she has attained age 65 and is receiving retirement benefits from Social Security or the Railroad Retirement Board (RRB), or is eligible to receive these retirement benefits, but has not yet applied for them.
Disability	An individual is entitled to Medicare benefits based on disability if he or she is under age 65 and has been entitled to Social Security or RRB disability benefits for 24 months . For individuals who have ALS (amyotrophic lateral sclerosis, also called Lou Gehrig’s disease), Medicare benefits automatically begin when disability benefits begin.
ESRD	An individual who needs regular dialysis or a kidney transplant is eligible for Medicare if he or she has worked the required amount of time under Social Security, the RRB or as a government employee, or is already receiving (or eligible to receive) Social Security or RRB benefits. An individual who has ESRD and is the spouse or dependent child of a person who meets these requirements is also eligible for Medicare. ESRD-based Medicare entitlement generally begins on the first day of the third month after the individual begins a regular course of dialysis (earlier entitlement may occur when an individual receives a kidney transplant or participates in a self-dialysis program).

Medicare has two main parts—Medicare Part A (hospital insurance) and Medicare Part B (physician and outpatient services). Medicare also offers prescription drug coverage (Medicare Part D) to everyone with Medicare. While most people do not have to pay premiums for Medicare Part A, Medicare beneficiaries are required to pay for their Part B and Part D coverage.

Coverage under Medicare Parts A and B typically **begins automatically** for individuals who are eligible for Medicare based on disability and for individuals who are eligible based on age and who are already receiving monthly retirement benefits from Social Security or the RRB. Individuals can choose to drop Medicare Part B, but individuals are **not permitted to waive Medicare Part A** and retain Social Security benefits. If an individual who has already started receiving Social Security benefits waives Medicare Part A, he or she would be responsible for refunding the Social Security payments already received, as well as any Medicare benefits paid on his or her behalf.

Individuals whose Medicare coverage does not begin automatically—that is, individuals who are not receiving retirement benefits from Social Security or the RRB at age 65 and individuals who are eligible for Medicare based on ESRD—must submit an application for Medicare benefits.

COBRA RULES FOR MEDICARE BENEFICIARIES

Employees Who Become Entitled to Medicare While Still Working

An employer that is subject to COBRA must offer continuation coverage only when group health plan coverage ends (or would end) due to a **qualifying event**. If an employee or dependent loses group health plan coverage for a reason that is not a COBRA-qualifying event, the employer is not required to offer COBRA coverage. Similarly, if the qualifying event does not cause a loss of group health coverage, the employer is not required to offer COBRA coverage.

Which employers are subject to COBRA? Private-sector employers are subject to COBRA if they had 20 or more employees on typical business days during the preceding year.

COBRA identifies seven events as qualifying events that trigger an obligation to offer COBRA coverage if they would result in a loss of group health plan coverage. An employee's Medicare entitlement is one of these seven events. If an employee would lose group health plan coverage due to his or her Medicare entitlement, a group health plan would be required to offer COBRA coverage to the employee's covered spouse and dependent children. A covered employee is **entitled to Medicare** when he or she is eligible for Medicare and actually enrolled in the Medicare program.

Medicare Entitlement – Qualifying Event

An employee's entitlement to Medicare is a COBRA qualifying event **ONLY IF** it would result in the loss of group health plan coverage. Most group health plans that are subject to COBRA are prohibited from terminating an employee's group health coverage due to the employee's Medicare entitlement. This prohibition comes from the MSP law, which bars most group health plans from "taking into account" a current employee's (or family member's) Medicare entitlement.

Key Points

An employee's Medicare entitlement will rarely be a first qualifying event that would trigger an obligation to offer COBRA coverage to the employee's spouse and dependent children. However, as explained more below, an employee's Medicare entitlement can extend the maximum COBRA coverage period for covered spouses and dependents if the employee has a termination or reduction in hours within 18 months after becoming entitled to Medicare.

The MSP rules include the following restrictions on terminating coverage for Medicare beneficiaries:

- ✓ Group health plans maintained by employers with **20 or more employees** must provide current employees (and current employees' spouses) who are age **65 or older** with the same benefits, under the same conditions, that are provided to employees and spouses who are under age 65.
- ✓ Group health plans maintained by employers with **100 or more employees** cannot deny or terminate coverage because an employee (or family member) is entitled to Medicare on the basis of **disability** without denying or terminating coverage for similarly situated individuals who are not entitled to Medicare on the basis of disability.
- ✓ A group health plan cannot differentiate in the benefits it provides between individuals having **ESRD** and other individuals covered by the plan on the basis of the existence of ESRD, the need for renal dialysis or in any other manner. This prohibition applies to all employers, regardless of size, and to all ESRD Medicare beneficiaries, not just those with current employment status.

Under the MSP rules, it is permissible for group health plans to terminate coverage for **retired employees** when they become entitled to Medicare due to age. In this situation, the retired employee's Medicare entitlement would be a qualifying event for the retiree's spouse and dependent children, permitting them to elect COBRA coverage for up to 36 months.

Medicare Entitlement before Termination or Reduction in Hours

Although an employee's entitlement to Medicare will rarely be a COBRA qualifying event due to the MSP rules, it can extend the maximum COBRA coverage period for covered spouses and dependents if the employee has a **termination or reduction in hours within 18 months after becoming entitled to Medicare**. Under this rule, where the spouse or dependent is covered under the plan on the day before the employee's termination or reduction in hours, the spouse and dependent are entitled to COBRA continuation coverage for the longer of:

- **18 months** from the date of the employee's termination or reduction in hours; or
- **36 months** from the date the employee became enrolled in Medicare.

This extension of coverage only applies to covered spouses and dependents; it does not apply to covered employees. Employees will remain eligible for 18 months of COBRA following the termination or reduction in hours.

Example: Mary, an employee of ABC Company became entitled to Medicare on March 1, 2017. Mary retires on April 1, 2017, and elects COBRA coverage for herself and her spouse, John, under ABC Company's group health plan. Mary is entitled to 18 months of COBRA coverage from the date of her retirement. John is eligible for 36 months of COBRA coverage from the date of Mary's Medicare entitlement on March 1, 2017. Thus, Mary's maximum COBRA period would expire on Oct. 1, 2018, while John's maximum COBRA period would expire on March 1, 2020.

An employee must be entitled to Medicare **before** his or her termination or retirement date in order for this special extension of COBRA coverage to apply to the employee's covered spouse and dependents.

- If the employee's Medicare entitlement begins **on the same day** that the employee terminates employment or retires, the employee's covered spouse and dependents are not eligible for this extension and their maximum COBRA period would remain at 18 months.
- As explained below, the multiple qualifying event rule does not usually apply when an employee becomes entitled to Medicare **after retirement**. Thus, as a general rule, an employee's entitlement to Medicare after he or she terminates employment or retires will not extend the maximum coverage period to 36 months for covered spouses and dependents. It will, however, allow the group health plan to terminate the COBRA coverage of the employee early.

Compliance Tip for Employers

To determine whether an employee's spouse and dependent children are eligible for this special extension to the maximum COBRA period, employers should consider asking employees who are eligible for COBRA due to a termination of employment or reduction of hours whether they are entitled to Medicare and, if so, when the Medicare entitlement occurred.

In addition, an employee (or family member) who becomes entitled to Medicare **before** making his or her COBRA election is still eligible for COBRA coverage. As explained more below, COBRA coverage may be terminated early for a qualified beneficiary who first becomes entitled to Medicare **after** electing COBRA. However, when an employee (or family member) first becomes entitled to Medicare before electing COBRA, COBRA coverage must be made available for the maximum continuation period.

Employees Who Become Entitled to Medicare after Terminating Employment

Medicare Entitlement – Multiple Qualifying Events

Under COBRA's rule for multiple qualifying events, where a qualified beneficiary elects COBRA following a termination of employment or reduction of hours and later experiences an event that would have been a qualifying event entitling the qualified beneficiary to 36 months of coverage, the qualified beneficiary is entitled to 36 months of coverage beginning from the date of the first qualifying event. This rule extends the maximum coverage period from 18 months (or 29 months in the case of a disability extension) to 36 months, measured from the date of the employment termination or reduction in hours.

In order for a second qualifying event to extend the maximum coverage period to 36 months, the second qualifying event must be an event that would have resulted in a loss of coverage under the health plan, in the absence of the first qualifying event. According to Internal Revenue Service (IRS) [Revenue Ruling 2004-22](#), an employee's Medicare entitlement is not a second qualifying event for a

qualified beneficiary unless the Medicare entitlement itself would have caused a loss of coverage for the qualified beneficiary under the group health plan.

Because most group health plans are prohibited from terminating an employee’s coverage due to his or her Medicare entitlement, **Medicare entitlement will rarely constitute a second qualifying event that extends the COBRA maximum coverage period.** Thus, an employee’s entitlement to Medicare after terminating employment generally will not extend the maximum COBRA period for covered spouses and dependent children from 18 months to 36 months.

Early Termination of COBRA

COBRA coverage may terminate before the maximum coverage period expires if a qualified beneficiary becomes entitled to Medicare benefits **after** electing COBRA coverage. This early termination rule only applies to the qualified beneficiary who becomes entitled to Medicare—other family members who are not entitled to Medicare must be allowed to continue their COBRA coverage. To determine whether a qualified beneficiary has become entitled to Medicare after electing COBRA, employers may want to periodically ask COBRA beneficiaries to provide information about their Medicare entitlement, especially those who are reaching age 65.

If continuation coverage is terminated early, the plan must provide the qualified beneficiary with an **early termination notice** as soon as practicable. The notice must explain why the coverage will terminate earlier than the end of the maximum coverage period, provide the date the coverage will terminate and describe any rights the qualified beneficiary may have to elect other coverage.

COORDINATION OF BENEFITS

Medicare’s coordination of benefits rules determine whether Medicare or another type of health coverage, such as COBRA coverage under an employer-sponsored group health plan, should pay first, or primary. A “primary payer” pays what it owes on benefit claims first, up to the limits of its coverage. The “secondary payer” only pays if there are covered costs that the primary payer did not cover. The following chart addresses Medicare’s coordination of benefits rules for COBRA coverage:

Medicare Eligibility	Primary Payer	Secondary Payer
Age	Medicare	COBRA
Disability	Medicare	COBRA
ESRD	COBRA (for the first 30 months, then Medicare is primary)	Medicare (for the first 30 months, then COBRA is secondary)