

Amendment by Pub. L. 99-509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 9501(e) of Pub. L. 99-509, set out as a note under section 162 of Title 26.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

### § 1163. Qualifying event

For purposes of this part, the term “qualifying event” means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

- (1) The death of the covered employee.
- (2) The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.
- (3) The divorce or legal separation of the covered employee from the employee’s spouse.
- (4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].
- (5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.
- (6) A proceeding in a case under title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 1167(3)(C) of this title within one year before or after the date of commencement of the proceeding.

(Pub. L. 93-406, title I, § 603, as added Pub. L. 99-272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229; amended Pub. L. 99-509, title IX, § 9501(a)(2), Oct. 21, 1986, 100 Stat. 2076.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

1986—Pub. L. 99-509 added par. (6) and last sentence.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 9501(e) of Pub. L. 99-509, set out as a note under section 162 of Title 26, Internal Revenue Code.

### § 1164. Applicable premium

For purposes of this part—

#### (1) In general

The term “applicable premium” means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

#### (2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

##### (A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

- (i) is determined on an actuarial basis, and
- (ii) takes into account such factors as the Secretary may prescribe in regulations.

##### (B) Determination on basis of past cost

If an administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

- (i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by
- (ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

##### (C) Subparagraph (B) not to apply where significant change

An administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

#### (3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(Pub. L. 93-406, title I, § 604, as added Pub. L. 99-272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229.)

### § 1165. Election

#### (a) In general

For purposes of this part—