

note under section 401 of Title 26, Internal Revenue Code.

§ 300bb-3. Qualifying event

For purposes of this subchapter, 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 subchapter, 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.

(July 1, 1944, ch. 373, title XXII, §2203, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 234.)

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 this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300bb-4. Applicable premium

For purposes of this subchapter—

(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 a plan 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 oc-

curing 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

A plan 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.

(July 1, 1944, ch. 373, title XXII, §2204, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 234.)

§ 300bb-5. Election

(a) In general

For purposes of this subchapter—

(1) Election period

The term “election period” means the period which—

- (A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,
- (B) is of at least 60 days’ duration, and
- (C) ends not earlier than 60 days after the later of—

- (i) the date described in subparagraph (A), or
- (ii) in the case of any qualified beneficiary who receives notice under section 300bb-6(4) of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 300bb-8(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(b) Temporary extension of COBRA election period for certain individuals

(1) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a),

such individual may elect continuation coverage under this subchapter during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(2) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(3) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

(A) beginning on the date of the TAA-related loss of coverage, and

(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 2701(c)(2),¹ section 1181(c)(2) of title 29, and section 9801(c)(2) of title 26.

(4) Definitions

For purposes of this subsection:

(A) Nonelecting TAA-eligible individual

The term “nonelecting TAA-eligible individual” means a TAA-eligible individual who—

(i) has a TAA-related loss of coverage; and

(ii) did not elect continuation coverage under this part² during the TAA-related election period.

(B) TAA-eligible individual

The term “TAA-eligible individual” means—

(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of title 26), and

(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(C) TAA-related election period

The term “TAA-related election period” means, with respect to a TAA-related loss of coverage, the 60-day election period under this part² which is a direct consequence of such loss.

(D) TAA-related loss of coverage

The term “TAA-related loss of coverage” means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(July 1, 1944, ch. 373, title XXII, §2205, as added Pub. L. 99-272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 235; amended Pub. L. 99-514, title XVIII,

§1895(d)(5)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 107-210, div. A, title II, §203(e)(2), Aug. 6, 2002, 116 Stat. 970.)

REFERENCES IN TEXT

Section 2701, referred to in subsec. (b)(3), is a reference to section 2701 of act July 1, 1944. Section 2701, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111-148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg-3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111-148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

AMENDMENTS

2002—Pub. L. 107-210 designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

1986—Par. (2). Pub. L. 99-514 inserted “of continuation coverage” after “any election” and inserted at end “If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 1895(e) of Pub. L. 99-514, set out as a note under section 162 of Title 26, Internal Revenue Code.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107-210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107-210, set out as a Construction note under section 35 of Title 26, Internal Revenue Code.

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, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb-6. Notice requirements

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,¹

¹ See References in Text note below.

² So in original. This subchapter is not divided into parts.

¹ So in original. Probably should be “subchapter”.