

(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 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

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

¹ See References in Text note below.

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

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

(2) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in paragraph (1), (2), or (4) of section 300bb-3 of this title within 30 days of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 300bb-3 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this subchapter is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the plan administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 300bb-3 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 300bb-3 of this title where the covered employee notifies the plan administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary’s rights under this subsection.¹

For purposes of paragraph (4), any notification shall be made within 14 days of the date on which the plan administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(July 1, 1944, ch. 373, title XXII, §2206, 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)(6)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 100-203, title IV, §4009(j)(8), Dec. 22, 1987, 101 Stat. 1330-59; Pub. L. 101-239, title VI, §6702(c), Dec. 19, 1989, 103 Stat. 2295; Pub. L. 104-191, title IV, §421(a)(2), Aug. 21, 1996, 110 Stat. 2088.)

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