CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

29 U.S.C. § § 1161-1168

Purpose

§ 601 [§ 1161]. (a) In general. The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans. Subsection (a) shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.

Continuation coverage

§ 602 [§ 1162]. For purposes of section 601, the term "continuation coverage" means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage. The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.

(2) Period of coverage. The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period.

(i) General rule for terminations and reduced hours. In the case of a qualifying event described in section 603(2), except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events. If a qualifying event (other than a qualifying event described in section 603(6)) occurs during the 18 months after the date of a qualifying event described in section 603(2), the date which is 36 months after the date of the qualifying event described in section 603(2).

(iii) Special rule for certain bankruptcy proceedings. In the case of a qualifying event described in section 603(6) (relating to bankruptcy proceedings), the date of the death of the covered

employee or qualified beneficiary (described in section 607(3)(C)(iii), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events. In the case of a qualifying event not described in section 603(2) or 603(6), the date which is 36 months after the date of the qualifying event.

(v) Qualifying event involving medicare entitlement. In the case of a qualifying event described in section 1163(2) of this title that occurs less than 18 months after the date the covered employee became entitled to benefits under Title XVIII of the Social Security Act [42 U.S.C.A. § 1395 et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

In the case of a qualified beneficiary who is determined, under Title II or XVI of the Social Security Act [42 U.S.C.A. § 401 et seq. or 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part, any reference in clause (i) or (ii) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 1166(3) of this title before the end of such 18 months.

(B) End of plan. The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium. The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement. The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) "which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary" (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of Title 26, part 7 of this subtitle, or title XXVII of the Public Health Service Act [42 U.S.C.A. § 300gg et seq.]), or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(C), entitled to benefits under title XVIII of the Social Security Act.

(E) Termination of extended coverage for disability. In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in section 603(2), the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

(3) Premium requirements. The plan may require payment of a premium for any period of continuation coverage, except that such premium-

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to "102 percent" is deemed a reference to "150 percent" for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability. The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option. In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

Qualifying event

§ 603 [§ 1163]. 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.

(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, United States Code, 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 607(3)(C) within one year before or after the date of commencement of the proceeding.

Applicable premium

§ 604 [§ 1164]. For purposes of this part—

(1) 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) 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) 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.

Election

§ 605 [§ 1165]. For purposes of this part—

(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 606(4), the date of such notice.

(2). 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 607(3) 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.

Notice requirements

§ 606 [§ 1166]. (a) In general. 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 [should read "part"],

(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), (4), or (6) of section 603 within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 603 within 60 days after the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 603(2) 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 administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 603, 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 603 where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event, of such beneficiary's rights under this subsection [part].

(b) The requirements of subsection (a)(2) of this section shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 603 if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.

(c) For purposes of subsection (a)(4) of this section, any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the 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.

Definitions and special rules

§ 607 [§ 1167]. For purposes of this part—

(1) Group health plan. The term "group health plan" means an employee welfare benefit plan providing medical care (as defined in section 213(d) of the Internal Revenue Code of 1986) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise.

(2) Covered employee. The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986).

(3) Qualified beneficiary.

(A) In general. The term "qualified beneficiary" means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this part.

(B) Special rule for terminations and reduced employment. In the case of a qualifying event described in section 603(2), the term "qualified beneficiary" includes the covered employee.

(C) Special rule for retirees and widows. In the case of a qualifying event described in section 603(6), the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the employee, or

(iii)as the surviving spouse of the covered employee.

(4) Employer. Subsection (n) (relating to leased employees) and subsection (t) (relating to application of controlled group rules to certain employee benefits) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of this part in the same manner and to the same extent as such subsections apply for purposes of section 106 of such Code. Any regulations prescribed by the Secretary pursuant to the preceding sentence shall be consistent and coextensive with any regulations prescribed for similar purposes by the Secretary of the Treasury (or such Secretary's delegate) under such subsections.

(5) Optional extension of required periods. A group health plan shall not be treated as failing to meet the requirements of this part solely because the plan provides both—

(A) that the period of extended coverage referred to in section 602(2) commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under section 606(a)(2) commences with the date of the loss of coverage.

§ 608 [§ 1168]. The Secretary may prescribe regulations to carry out the provisions of this part.