



Practical Insights: Dealing with Medicare Part B and COBRA Coverage

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Problem

Generally, the Social Security Act provides that individuals may enroll in Medicare Part B (which covers doctors visits and other outpatient services) when they reach age 65. If they fail to do so during a seven-month initial enrollment period surrounding their 65th birthday, they can enroll during an annual "general enrollment" period that occurs each January 1- March 31, with coverage becoming effective the following July 1, though they will incur a penalty in the form of permanently higher Part B premiums (10% increase for each year of available coverage that is foregone). However, actively employed individuals who have employer-provided health coverage can postpone signing up for Medicare Part B until after age 65. When they lose the employer-provided coverage or terminate employment, whichever happens first, they are then provided an eight-month "special enrollment period" ("SEP") during which they can sign up for Medicare effective immediately and without penalty.

But most employees in these circumstances also have the option to extend their employer-provided coverage (though they usually have to pay for it) under COBRA, and many do just that. However, delaying Medicare Part B enrollment until COBRA coverage expires disqualifies the employee from the eight-month SEP that he or she would have had at termination of employment. Instead, the employee can sign up only during a general enrollment period, (i.e., January 1 to March 31), and coverage doesn't begin until the following July 1. The individual also suffers the late-enrollment penalty (i.e., higher Part B premiums).

The Social Security law allows people to postpone enrollment in Part B without penalty only if, and for so long as, they have group health insurance coverage that is provided by an employer for whom they (or their spouses) are still working. The eight-month SEP runs from loss of group health coverage or termination of employment – whichever comes first. So expiration of COBRA continuation coverage (presumably more than eight months after termination of employment) does not trigger a SEP.

(Medicare Part D – the prescription drug benefit – has different rules. Employees who take advantage of COBRA continuation still have a two-month special enrollment period following expiration of COBRA coverage during which they may enroll in a Part D drug plan without penalty.)

This is not a well-known – or well-publicized – rule. It is not explained in the Department of Labor's information brochure for people who are considering

electing COBRA coverage. Nor is it mentioned in the Social Security Administration's website in either its general information on Medicare Part B coverage or its "frequently asked questions." You can find an explanation, but it may require some searching. (See, for example, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0600805330>, which is taken from the Social Security Administration's Program Operations Manual.)

To complicate matters, many employees simply rely upon information that they obtain from their employers, or their insurance companies, neither of which are necessarily familiar with the details of this rule. The general perception is that employees don't need to enroll in Part B until their employer-provided insurance has ended, but, as many people have discovered, it is not quite that simple for those who stop working but continue their health insurance under COBRA.

Solution

In order to help resolve this problem, a bill currently is pending in Congress – the Medicare Enrollment Protection Act of 2010 (HR 5588) – which would, among other things, amend the Social Security Act to: (1) establish a Medicare Part B special enrollment period for individuals who do not enroll in Part B during their initial enrollment period but who enroll in COBRA continuation coverage; (2) create a continuous open enrollment for Medicare Part B, with premium penalty but not limited to January-March, separate from the initial enrollment period or any special enrollment period; and (3) create special enrollment periods as necessary to correct errors, including misrepresentations, by officers, employees, or agents of group health plans or plan sponsors.

In the meantime, avoid providing your employees with incorrect information. Referring them to government resources may not solve the problem, as websites and even offices do not necessarily have complete information. A simple statement in your COBRA notice/enrollment materials may be the best way to do the job.

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