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**Tax Reform and Tax Advantaged Benefits**

After months of debate on tax reform, Congress passed the "Tax Cuts and Jobs Act" (H.R. 1) to overhaul the tax code. Items of interest for tax advantaged benefits include the dependent care flexible spending account, adoption assistance, education assistance programs, transportation plans, and the individual mandate under the ACA.

With implementation starting in January, the impact of "Tax Cuts and Jobs Act" would be felt all throughout early 2018. Tax reform legislation removes the ACA's individual mandate requirement for months beginning after 12/31/18 and onward. [Read more >](#)

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**COBRA Part III: COBRA and Other Coverage**

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### Today's Agenda:

- COBRA Review
- Medicare Background
- Medicare as Cause for Early Termination
- Medicare as Secondary Event
- COBRA and Paid Benefits
- Alternative coverage
- What Happens Next? Preview of Part IV



### COBRA Review

## **COBRA Review**

- **COBRA continuation period**
  - 18 Months - loss of coverage due to:
    - **Termination of employment**
    - **Reduction in hours**
  - 36 Months - loss of family member coverage due to:
    - **Death of the covered employee**
    - **Divorce or legal separation**
    - **Employee's entitlement to Medicare**
    - **Loss of dependent status**

## **COBRA Review**

- **COBRA 18-month period can be extended**
  - Disability extension
  - Multiple events
  - Medicare entitlement



## Medicare Background

## Medicare Background

- Individuals become eligible for Medicare at age 65, due to disability, or due to kidney failure (ESRD)
- “Entitled to Medicare” means the individual is eligible for and enrolled in Medicare
- Medicare entitlement of an active employee, spouse or dependent does not cause loss of group health plan coverage (Medicare Secondary Payer (MSP) rules)

## Medicare Background

- Eligible individual can postpone enrollment in Medicare with no late enrollment penalty as long as employer's plan is creditable coverage
- Eligible individual can postpone receipt of Social Security benefits but enroll in Medicare
  - Employer plan would pay primary if individual has dual coverage

## Medicare Background

- Individual who elects to receive Social Security benefits is automatically enrolled in Part A effective 1st of month of 65th birthday or 6 months prior to receipt of Social Security, whichever is later
  - Employer plan would pay primary if individual has dual coverage



## Medicare as Cause for Early Termination

## Medicare as Cause for Early Termination

- **Medicare entitlement after electing COBRA**
  - QB becoming entitled to Medicare after COBRA election date is reason to terminate COBRA early for that QB
    - **Other QBs on the plan do not lose their coverage**
  - Example 1: Bill retired and his wife Mary was on his health plan
    - **Bill and Mary were offered 18 months of COBRA coverage**
    - **Bill elects COBRA on April 28<sup>th</sup>**
    - **At age 65, Bill enrolls in Medicare and is entitled to benefits May 1<sup>st</sup>**
    - **Bill's COBRA ends April 30<sup>th</sup> (coverage terminates early)**
    - **Mary can continue for the remainder of the 18 months**

## Medicare as Secondary Event

- **Medicare entitlement after electing COBRA**
  - Example 2: Bill retired and his wife Mary was on his health plan
    - Bill and Mary were offered 18 months of COBRA coverage
    - Bill elects COBRA on July 10<sup>th</sup>
    - Bill enrolls in Medicare on August 28<sup>th</sup> and is entitled to benefits July 1<sup>st</sup> (on July 1<sup>st</sup> COBRA hasn't started, cannot terminate early)
    - Bill and Mary's COBRA continue for the remainder of the 18 months

## Medicare as Secondary Event

- **Medicare entitlement after electing COBRA**
  - Example 3: Bill retired and his wife Mary was on his health plan
    - Bill and Mary were offered 18 months of COBRA coverage
    - Bill elects COBRA on July 1<sup>st</sup>
    - Bill enrolls in Medicare on August 28<sup>th</sup> and is entitled to benefits July 1<sup>st</sup> (on July 1<sup>st</sup> COBRA hasn't started, cannot terminate early)
    - Bill and Mary's COBRA continue for the remainder of the 18 months





## Medicare as Secondary Event

## Medicare as Secondary Event

- **Only applies if covered employee's Medicare entitlement is prior to qualifying event**
  - QB is offered 18 months
  - Spouse and any dependent children are offered longer of:
    - **18 months of COBRA from qualifying event, or**
    - **36 months of COBRA from retiree's Medicare entitlement date**

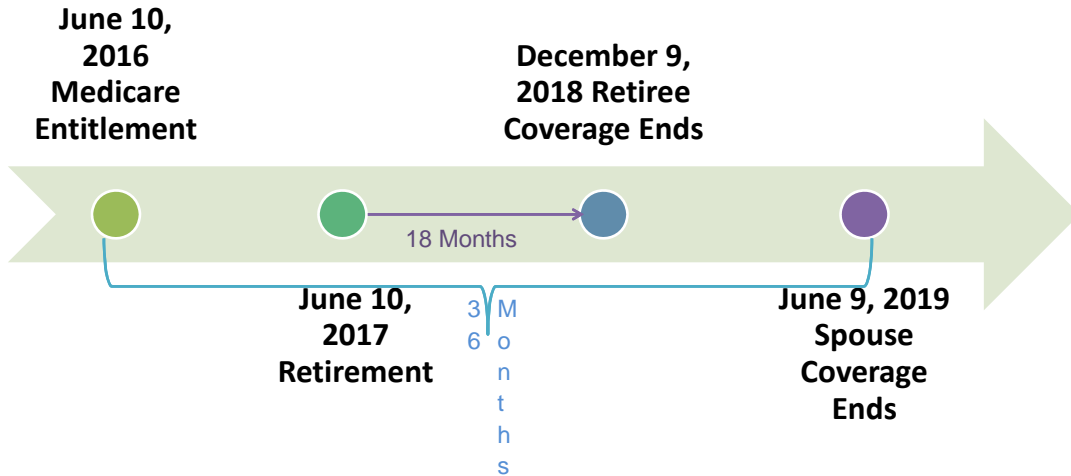
## Medicare as Secondary Event

- **Only applies if covered employee's Medicare entitlement is prior to qualifying event**
  - Example 1: Bonnie retired and her husband George was on her health plan
    - Bonnie becomes entitled to Medicare one year before she retires
    - Bonnie is offered 18 months of COBRA
    - Her husband George is offered 36 months of COBRA counted from Bonnie's original entitlement date
    - For George, this will provide an additional 6 months of COBRA

## Medicare as Secondary Event

- **Only applies if covered employee's Medicare entitlement is prior to qualifying event**
  - Example 2: Jim retired and his wife Mary was on his health plan
    - Jim became entitled to Medicare 2 years prior to retiring
    - Jim is offered 18 months of COBRA
    - His wife Mary is also offered 18 months of COBRA
    - Going back 2 years and offering 36 months would only provide 12 months of COBRA coverage after Jim's retirement

## Medicare as Secondary Event



## COBRA and Paid Benefits

## COBRA and Paid Benefits

- **Employer can pay for benefits for a period of time**
- **Employer has 3 options for how to treat the paid benefits:**
  - Postpone the loss
  - Offer COBRA to run concurrently (subsidize COBRA)
  - Provide alternative coverage

## COBRA and Paid Benefits

- **Postpone the loss**
  - Can only offer this if the employee has to pay no more than what they paid while active
  - Must get carrier to agree
  - Do not offer COBRA at qualifying event
  - Employee is treated as an active employee on the plan
    - **Cannot terminate coverage early for Medicare entitlement**
    - **Must offer COBRA for 36 month events**

## COBRA and Paid Benefits

- **Postpone the loss**
  - If employee's share increases to more than what they paid while active prior to end of 18 months, then that payment increase date is qualifying event date
    - **18 months of COBRA offered at that point**
  - If employee's share increases to more than what they paid while active after end of 18 months, no COBRA to offer

## COBRA and Paid Benefits

- **Postpone the Loss**
  - Example 1:
    - **ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57**
    - **Bill retires at age 60**
    - **Bill receives 3 years of paid health insurance**
    - **Bill dies at age 61, his spouse is offered COBRA for 36 months counted from the death date**

## COBRA and Paid Benefits

- **Postpone the Loss**
  - Example 2:
    - ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57
    - Bill retires at age 64
    - ABC's payment ceases due to Bill turning age 65
    - Bill and his spouse are offered COBRA for 18 months counted from the loss of the employer payment

## COBRA and Paid Benefits

- **Offer COBRA to run concurrently (subsidize COBRA)**
  - Offer COBRA at qualifying event
  - If employee does not take COBRA, then no paid benefit
  - Employee is treated as a QB on the plan
    - **Can terminate coverage early for Medicare entitlement**
    - **COBRA rules apply regarding length of coverage**

## COBRA and Paid Benefits

- **Offer COBRA to run concurrently (subsidize COBRA)**
  - If employee's share increases to more than what they paid while active prior to end of 18 months, then payment obligation simply shifts to QB
  - If employer payment is longer than 18 months, must receive carrier approval

## COBRA and Paid Benefits

- **Offer COBRA to run concurrently (subsidize COBRA)**
  - Example 1:
    - ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57 and elect COBRA
    - Bill retires at age 60
    - Bill elects COBRA and receives 3 years of paid health insurance (18 months COBRA, 18 months as a retiree benefit)
    - Bill dies at age 61, his spouse receives a 18 month extension due to the multiple event

## COBRA and Paid Benefits

- **Offer COBRA to run concurrently (subsidize COBRA)**
  - Example 2:
    - ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57 and elect COBRA
    - Bill retires at age 64
    - Bill elects COBRA
    - ABC's payment ceases due to Bill turning age 65
    - Bill's spouse can stay on for the original 18 months counted from the retirement date

## COBRA and Paid Benefits

- **Provide alternative coverage**
  - Offer COBRA at qualifying event
  - Must get carrier to agree
  - If employee does not waive COBRA, then no paid benefit
  - Employee is treated as inactive on the plan
    - Can terminate coverage early for Medicare entitlement
    - Must offer COBRA for 36 month events



## COBRA and Paid Benefits

- **Provide alternative coverage**
  - If employee's share increases, no qualifying event due to waiver of COBRA
  - If family members lose coverage during the alternative coverage period due to a qualifying event, they must be offered COBRA since they did not waive their COBRA rights
  - Medicare Secondary Payer rules do not apply so family members may lose coverage due to covered employee's Medicare entitlement

## COBRA and Paid Benefits

- **Provide alternative coverage**
  - Example 1:
    - ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57 and waive COBRA
    - Bill retires at age 60
    - Bill waives COBRA and receives 3 years of paid alternative coverage
    - Bill dies at age 61, his spouse must be offered 36 months of COBRA for the alternative coverage

## COBRA and Paid Benefits

- Provide alternative coverage
  - Example 2:
    - ABC Corp provides 3 years of paid health insurance or to age 65, whichever occurs first, for employees that retire at or after age 57 and waive COBRA
    - Bill retires at age 64
    - Bill waives COBRA and enrolls on the alternative coverage
    - ABC's payment ceases due to Bill turning age 65
    - Bill's spouse is offered 18 months of COBRA for the alternative coverage counted from the date the payment ceases



## Alternative Coverage

## Alternative Coverage

- **Employer can offer QB alternative coverage to COBRA**
  - Most common example is with retirees
  - Could be used in severance agreement situations
- **Alternative plan can be the same plan as active plan or different plan**
- **COBRA event due to retiree's Medicare entitlement contingent on terms of employer's alternative coverage**

## Alternative Coverage

- **COBRA event due to retiree's Medicare entitlement contingent on terms of employer's alternative coverage**
  - Example 1:
    - **Employer pays for alternative coverage for maximum period, regardless of Medicare entitlement of retiree or spouse**
    - **Employer will pay for 3 years of alternative coverage for Bill**
    - **If Bill or his wife become entitled to Medicare during the 3 years, the alternative coverage becomes secondary to Medicare**
    - **At the end of 3 years, there is no qualifying event so long as Bill waived COBRA at retirement**

## Alternative Coverage

- **COBRA event due to retiree's Medicare entitlement contingent on terms of employer's alternative coverage**
  - Example 2:
    - Employer pays for maximum period or until retiree is entitled to Medicare, whichever occurs first
    - Assume retiree becomes entitled to Medicare prior to maximum period – no COBRA for retiree, it was waived at outset
    - If spouse also loses coverage when retiree becomes entitled to Medicare, spouse is offered 36 months of COBRA for alternative plan from retiree's Medicare entitlement date

## Alternative Coverage

- **COBRA event due to retiree's Medicare entitlement contingent on terms of employer's alternative coverage**
  - Example 2:
    - If spouse has to pay (pay more) for alternative coverage when retiree loses coverage, spouse is offered 36 months of COBRA for alternative plan from retiree's Medicare entitlement date
    - If spouse continues on alternative coverage with no change in premium, then no COBRA offered to spouse when payment is exhausted or spouse becomes entitled to Medicare



## Preview of Part IV: Common Pitfalls



### In Part IV, We Will Cover:

- COBRA and Health Care FSAs In Depth
- Calculating Premiums for HRAs In Depth
- COBRA and Leaves of Absence
- COBRA in Mergers & Acquisitions

## Questions?

**Thank you for attending!**

Any questions can also be addressed by e-mail or phone:

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