GBS Health Benefits Compliance

COBRA & Medicare Interaction Reference Guide

This Reference Guide provides two charts to help employers understand how COBRA continuation coverage interacts with Medicare eligibility.

› The first matrix "Timing of COBRA Election and Medicare Eligibility or Entitlement" includes specific examples of how the timing of the COBRA election and the Medicare entitlement or eligibility can significantly affect coverage duration for both the employee and their dependents.

- Medicare "entitlement" is synonymous with enrollment in Medicare,
- Medicare "eligibility" means the individual meets the criteria to enroll, like age and years of covered employment, but has not yet enrolled.

Keep in mind that COBRA coverage could also end for reasons other than Medicare entitlement, for example, if the maximum COBRA period is reached, if the plan ends and the employer ceases to provide any group health plan to any employee, or if the qualified beneficiary fails to timely pay the premium. This matrix only addresses how Medicare affects COBRA.

› The second matrix "Medicare Enrollment Periods and Late Enrollment Penalties" details the various Medicare enrollment periods (initial, special and general) and late enrollment penalties, and how these differ for Medicare Part D (prescription drug coverage), Medicare Parts A and B (hospital and medical insurance) and Part C (Medicare Advantage). This information can be an important factor with COBRA analysis.

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Timing of COBRA Election and Medicare Eligibility or Entitlement

Scenario	Order of Medicare & COBRA Events	Employee COBRA & Medicare, Eligibility & Duration	Spouse or Dependent COBRA & Medicare, Eligibility & Duration	Additional Notes
1A. Employee and dependent on GHP; Employee enrolls in Medicare and also stays on GHP; **Employee has reduction in hours but is not terminated**	1. Medicare entitlement 2. COBRA Qualifying Event (QE) & COBRA election & start date	Employee is eligible for COBRA, and employee's prior Medicare cannot be a basis for terminating COBRA early.	Eligible for COBRA until the later of: 1) 36 months after employee became entitled to Medicare, or 2) 18 months after date of termination or reduction of hours (29 months if disability extension).	General rule: COBRA ends when employee is entitled to Medicare BUT not if employee was on Medicare prior to electing COBRA • Medicare is primary; COBRA is secondary. 29 U.S.C. §1162 (2)(D) 26 CFR § 54. 4980B-7 Q&A-3. 26 CFR § 54.4980B-7 Q&A-4(d)(1)
1B. Employee and dependent on GHP; Employee enrolls in Medicare and also stays on GHP; Employee is terminated.	1. Medicare entitlement 2. COBRA Qualifying Event (QE) & COBRA election & start date	Employee is eligible for COBRA, and employee's prior Medicare cannot be a basis for terminating COBRA early. Same results whether Employee is terminated or has a reduction in hours.	Eligible for COBRA until the later of: 1) 36 months after employee became entitled to Medicare, or 2) 18 months after date of termination or reduction of hours (29 months if disability extension). Same as above.	Medicare pays primary to COBRA, because COBRA is not considered GHP coverage based on "current employment." Same cites as above in 1A. 26 CFR § 54.4980B-7 Q&A-3
1C. Employee and dependent on GPH; Employee enrolls in Medicare and stays on GHP; Employee is terminated within 18 months. Elects COBRA after termination.	1. Medicare entitlement 2. COBRA Qualifying Event (QE) (termination) within 18 months, then COBRA election & start date	Employee is eligible for up to 18 months of COBRA from QE date (or COBRA start date if plan so provides, e.g. first of the month after QE), and employee's prior Medicare cannot be a basis for terminating COBRA early.	Eligible for COBRA until the later of: 1) 36 months after employee became entitled to Medicare, or 2) 18 months after date of termination or reduction of hours (29 months if disability extension for dependent).	Medicare pays primary to COBRA, because COBRA is not considered GHP coverage based on "current employment." Same cites as above in 1A. 26 CFR § 54.4980B-7 Q&A-4(d)(1)

Timing of COBRA Election and Medicare Eligibility or Entitlement

Scenario	Order of Medicare & COBRA Events	Employee COBRA & Medicare, Eligibility & Duration	Spouse or Dependent COBRA & Medicare, Eligibility & Duration	Additional Notes
2. Employee and dependent on GHP; Employee turns 65 early in the month but doesn't enroll in Medicare until after the 15th; Employee is laid off later in the month and enrolls in COBRA.	1. Medicare eligible 2. Termination 3. Medicare entitlement & COBRA start on same date. (unless plan terms provide otherwise or Employee elects earlier).	Employee is eligible for COBRA, and employee's entitlement to Medicare (on or before date COBRA is elected) cannot be a basis for terminating COBRA. Medicare starts on first of next month because Employee did not enroll prior to first of month in which he attained age 65. COBRA probably also starts on first of next month, unless plan says it starts earlier. (See last column.)	Eligible for COBRA until the later of: 1) 36 months after employee became entitled to Medicare, or 2) 18 months after date of termination or reduction of hours (29 months if disability extension). Same as above.	Medicare pays primary to COBRA, because COBRA is not considered GHP coverage based on "current employment." NOTE: *If Employee elected COBRA before Medicare entitlement date, plan can end Employee's COBRA on date Employee becomes entitled to Medicare.* Same cites as above in 1A. 26 CFR § 54.4980B-7 Q&A-3
2B. Employee and dependent on GHP; Employee turns 65 and enrolls in Medicare and remains on GHP.	1. Medicare entitlement 2. Potential COBRA Qualifying Event (QE) but no enrollment in COBRA	Employee can continue in GHP and enroll in Medicare. Medicare pays secondary. Medicare entitlement is usually not a COBRA qualifying event, because of MSP rules.	Employee's Medicare entitlement is not a QE for family members unless it results in loss of GHP coverage for them.	If Medicare entitlement did cause loss of GHP coverage, affected family members could elect up to 36 months of COBRA under the plan.
3. Employee and dependent on GHP; Employee is terminated & elects & enrolls in COBRA; Employee later enrolls in Medicare.	1. COBRA QE & start date 2. Medicare entitlement	Plan can end Employee's COBRA on date Employee becomes entitled to Medicare. If don't enroll in Medicare when first eligible, can't enroll until special or general enrollment period. If don't enroll in special enrollment period, can't enroll until next general enrollment period (January 1-March 31), so could have a gap in coverage.	Employee's entitlement to Medicare does not end family members' COBRA. They remain eligible for 18 months of COBRA (29 months if qualify for disability extension). Employee's enrollment in Medicare is not a 2nd QE for family members on COBRA.	Family members can elect an additional 18 months of COBRA if a 2nd QE occurs during the initial 18 months (e.g., death of or divorce from the employee). Employee might have Medicare late enrollment penalty.

Timing of COBRA Election and Medicare Eligibility or Entitlement

Scenario	Order of Medicare & COBRA Events	Employee COBRA & Medicare, Eligibility & Duration	Spouse or Dependent COBRA & Medicare, Eligibility & Duration	Additional Notes
4A. Employee terminated and elected COBRA for self and dependents; COBRA coverage ends, then employee becomes Medicare-eligible	1. COBRA QE & start date & end date 2. Medicare eligible 3. Enroll in Medicare	Employee not eligible to extend or renew COBRA, once the original COBRA period ends. If Employee enrolls in Medicare when first eligible or during a special enrollment period, no late enrollment penalty will apply.	Not eligible for extended COBRA period unless had second QE during first 18 months of COBRA or qualify for Social Security disability extension.	If delay enrolling in Medicare past initial or special enrollment periods, will face late enrollment penalty of 10% increase in premiums for each 12-month period of delay. Late penalty will not apply in this case, unless Employee delays enrolling.
4B. Same as above BUT Employee became Medicare-eligible while on COBRA but did not enroll until after COBRA ended.	1. COBRA QE & start date 2. Medicare eligible 3. COBRA end date 4. Medicare enrollment	Employee not eligible to extend or renew COBRA, once the original COBRA period ends. Employee can enroll in Medicare Advantage during first 2 months after COBRA, but cannot enroll in Original Medicare until the general enrollment period (January 1-March 31), so might have a gap in coverage.	Not eligible for extended COBRA period unless had second QE during first 18 months of COBRA or qualify for Social Security disability extension. Family members can enroll in Medicare if they are eligible under Medicare rules (e.g., age 65 or disabled).	Employee and family members might have a gap in coverage because can only enroll in Medicare during initial, special or general enrollment periods. Also, Medicare late enrollment penalty applies if enroll late.
4C. Same as above BUT Employee does enroll in Medicare while on COBRA	1. COBRA QE & start date 2. Medicare entitlement	Plan can end Employee's COBRA on date Employee becomes entitled to Medicare.	Employee's Medicare entitlement usually does not cause a loss of coverage for family members under the plan, so is usually not a 2nd QE for family members.	If Medicare entitlement did result in loss of coverage it would count as 2nd QE, so affected family members could elect an additional 18 months of COBRA. Rev. Rule 2004-22

Timing of COBRA Election and Medicare Eligibility or Entitlement

Scenario	Order of Medicare & COBRA Events	Employee COBRA & Medicare, Eligibility & Duration	Spouse or Dependent COBRA & Medicare, Eligibility & Duration	Additional Notes
5. Dependent becomes Medicare-eligible during COBRA	1. COBRA start date 2. Medicare eligible	N/A because dependent's status does not affect Employee's eligibility for COBRA or Medicare.	Dependent may remain on COBRA, because Medicare eligibility does not end COBRA coverage. However, if dependent enrolls in Medicare, plan can end dependent's COBRA.	Might have a gap in coverage after COBRA ends because can only enroll in Medicare during initial, special or general enrollment periods. If enroll late, Medicare late enrollment penalty applies.
6. Employee and family members on COBRA; Employee or family members get Social Security (SS) disability determination.	1. COBRA election 2. Social Security (SS) Disability determination	Employee is eligible for 29 months of COBRA if (s)he gets SS disability determination that relates to first 60 days of COBRA	Covered family members are eligible for 29 months of COBRA if they get SS disability determination that relates to first 60 days of COBRA. (Same as for Employee).	SS disability determination must be presented to COBRA administrator before end of first 18 months of COBRA.

Medicare Enrollment Periods and Late Enrollment Penalties

An individual who is on COBRA and delays enrollment in Medicare when initially eligible might have a gap in coverage, because an individual can only enroll in Medicare during initial, special or general/annual enrollment periods. Medicare Advantage has a special enrollment period for two months after COBRA ends, but Original Medicare does not. COBRA generally counts as creditable coverage for Medicare Part D, but not always for Medicare Part B — so electing COBRA and delaying Part B when first eligible can result in a gap in coverage and also a late enrollment penalty (which applies annually for as long as the individual remains on Medicare).

Elections for a particular Medicare plan are generally effective for the calendar year. However, if an individual joins a Medicare Advantage Plan during their Initial Enrollment Period, they can make a change within the first 3 months and switch to another Medicare Advantage Plan (with or without drug coverage) or to an Original Medicare plan (with or without a drug plan). If the change is to an Original Medicare plan, the insurers for Supplemental Medicare (MediGap) policies cannot impose underwriting restrictions. However, if an individual changes from a Medicare Advantage plan to an Original Medicare plan during a subsequent Annual Open Enrollment Period, the individual generally will not have "guaranteed issue" rights for a MediGap policy and the insurer may charge higher premiums or deny coverage based on health status, or impose a waiting period of up to six months for pre-existing conditions.

Type of Medicare	Initial Enrollment Period	Special Enrollment Period	Annual Open Enrollment Period	Late Enrollment Penalties	Additional Notes
Medicare Part A (with premiums) and/or Part B. **(Part A is Hospital Insurance; Part B is Medical Insurance)**	7 months: The 3 months before the month the individual turns 65, the month of the 65th birthday, and the 3 months after the age-65 birthday month. If individual enrolls during the first 3 months, coverage starts on the first of the month in which the individual turns age 65. Otherwise, coverage starts on the first of the month after the month of enrollment.	Ends 8 months after the earlier of: 1) date GHP coverage ends (based on "current employment" of employee or spouse), or 2) date current employment ends. See "Additional Notes" Coverage begins on the first of the month after the month in which the individual enrolls.	January 1 – March 31 each year. Coverage begins on the first of the month after the date of enrollment.	Additional 10% in premium costs for every 12-month period past the initial or special enrollment period. This increased cost continues as long as the individual is on Medicare.	COBRA does NOT count as coverage due to "current employment," whether due to reduced hours or termination, so an individual who delays Medicare until COBRA ends might have a gap in coverage and also have late enrollment penalties.

Medicare Enrollment Periods and Late Enrollment Penalties

Type of Medicare	Initial Enrollment Period	Special Enrollment Period	Annual Open Enrollment Period	Late Enrollment Penalties	Additional Notes
Medicare C – Medicare Advantage **(includes Parts A & B and often/ usually D)**	Same as above: The 3 months before the month the individual turns age 65, the month of the 65th birthday, and the 3 months after that month. If individual enrolls during the first 3 months, coverage starts on the first of the month in which the individual turns age 65. Otherwise, coverage starts on the first of the month after the month of enrollment.	Two full months after the month in which COBRA or GHP coverage ends. Coverage generally begins on the first of the month after the month in which the individual enrolls.	Two periods: 1- October 15 – December 7. If already in Part C or Original Medicare: can elect to switch from one Part C plan to another or from Original Medicare to Part C plan or vice-versa. Change will be effective next January 1. 2- January 1 to March 31. If already in a Part C plan: can switch to a different Part C plan or disenroll from current plan to return to Original Medicare.	Additional 10% in premium costs for every 12-month period past the initial or special enrollment period. This increased cost continues as long as the individual is on Medicare.	Special rule: If an individual joins a Part C Plan during Initial Enrollment Period, can change within first 3 months and instead elect another Part C Plan (with or without Part D drug coverage) or elect Original Medicare (with or without a drug plan).
Medicare Part D	Same as above: The 3 months before the month the individual turns age 65, the month of the 65th birthday, and the 3 months after that month. If individual enrolls during the first 3 months, coverage starts on the first of the month in which the individual turns age 65. Otherwise, coverage starts on the first of the month after the month of enrollment.	The month in which the individual loses Part D creditable coverage, plus the next 2 months. However, an individual would not be allowed to join a Medicare Part D plan during a Part D special enrollment period if the individual was not also enrolled in Medicare Part A or B. Coverage generally begins on the first of the month after the month in which the individual enrolls.	The Part D Annual Enrollment/Election Period runs from October 15 – December 7; elections are effective the next January 1. (Different from Part A & B General Enrollment Period!)	Additional 10% in premium costs for every 12-month period past the initial or special enrollment period. This increased cost continues as long as the individual is on Medicare.	COBRA DOES count as Part D creditable coverage if it meets creditability requirements. No late penalty applies if individual enrolls in Part D within 63 days of losing other drug coverage that is creditable.

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Medicare Enrollment Periods and Late Enrollment Penalties

Type of Medicare	Initial Enrollment Period	Special Enrollment Period	Annual Open Enrollment Period	Late Enrollment Penalties	Additional Notes
Premium-free Part A only (Hospital Insurance)	Starts 6 months prior to the month an individual applies for SS benefits (or Railroad Retirement benefits), but not earlier than the first of the month the individual turns age 65.	No special enrollment period because premium-free Part A benefits are available at age 65 for qualified individuals, and automatically start and are retroactive for prior 6 months when an individual applies for SS benefits or Railroad Retirement benefits after age 65.	No annual enrollment period, but once individual elects a specific Part B or C Medicare plan, that plan also provides Part A benefits.	No late enrollment penalties. But Employees in HSAs and HDHPs who work past age 65 and do not apply for SS benefits should notify SSA to waive automatic Part A benefits at age 65 if they want to continue to make HSA contributions.	Part A is free for individuals who are at least age 65 and have at least 40 quarters (10 years) of covered employment. Annual HSA contribution amount is reduced by 1/12 for each month the Employee is enrolled in Medicare Part A.
Special Rule if Employer or Health Plan provided inaccurate information	If an individual missed a chance to sign up because they got inaccurate or misleading information from their health plan or employer on or after 1/1/2023, they get a Special Enrollment Period (SEP).	To sign up, the individual must fill out form CMS-10797 and send the completed form to their local Social Security office by fax or mail. The form can be downloaded from the following website: https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-does-medicare-coverage-start	SEP Starts: The day the individual notifies the Social Security Administration that their health plan or employer misrepresented or gave them incorrect information.	SEP Ends: 6 months later. No late enrollment penalty applies.	Coverage begins: The month after the individual signs up.

This document is not intended to be exhaustive, nor should any information be construed as tax or legal advice.