



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

May 25, 2016

Number: **2016-0043**
Release Date: 9/30/2016

CONEX-115881-16

UIL: 4980B.02-00

The Honorable Garret Graves
Member, U.S. House of Representatives
2351 Energy Drive, Suite 1200
Baton Rouge, LA 70808

Attention:

Dear Representative Graves:

I am responding to your inquiry dated April 14, 2016, on behalf of your constituent, _____, about COBRA continuation coverage. Specifically, _____ asked about the COBRA disability extension.

Continuation of employer-provided health coverage under COBRA generally allows individuals once covered by their employers' health plans to continue that coverage for a limited period by timely electing and paying an applicable premium. The Internal Revenue Code (the Code) and regulations provide minimum periods during which health plans must accept elections to continue coverage. The Code and regulations do not prohibit plans from allowing longer periods for elections; however, the Code and regulations do not require plans to allow for longer periods for making elections. The IRS's role in such elections is limited to ensuring that employers provide the minimum periods for elections. The IRS does not have authority to provide for longer periods.

Generally, the period of COBRA continuation coverage is 18 months. The Code provides for an extension –

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of [COBRA continuation coverage] ... but only if the qualified beneficiary has provided notice of such determination ... before the end of such 18 months. Section 4980B(f)(2)(B)(VIII) of the Code.

Treasury Regulation section 54.4980B-7, Q&A 5, addresses how a qualified beneficiary becomes entitled to a disability extension.

Q-5: How does a qualified beneficiary become entitled to a disability extension?

A-5: (a) A qualified beneficiary becomes entitled to a disability extension if the requirements of paragraphs (b), (c), and (d) of this Q&A-5 are satisfied with respect to the qualified beneficiary. If the disability extension applies with respect to a qualifying event, it applies with respect to each qualified beneficiary entitled to COBRA continuation coverage because of that qualifying event. Thus, for example, the 29-month maximum coverage period applies to each qualified beneficiary who is not disabled as well as to the qualified beneficiary who is disabled, and it applies independently with respect to each of the qualified beneficiaries. See Q&A-1 in § 54.4980B-8, which permits a plan to require payment of an increased amount during the disability extension.

(b) The requirement of this paragraph (b) is satisfied if a qualifying event occurs that is a termination, or reduction of hours, of a covered employee's employment.

(c) The requirement of this paragraph (c) is satisfied if an individual (whether or not the covered employee) who is a qualified beneficiary in connection with the qualifying event described in paragraph (b) of this Q&A-5 is determined under title II or XVI of the Social Security Act (42 U.S.C. 401-433 or 1381-1385) to have been disabled at any time during the first 60 days of COBRA continuation coverage. For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A-5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods (as described in paragraph (b) of Q&A-4 of this section) then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost). However, in the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the period of the first 60 days of COBRA continuation coverage is measured from the date of birth or placement for adoption. For purposes of this paragraph (c), an individual is determined to be disabled within the first 60 days of COBRA continuation coverage if the individual has been determined under title II or XVI of the Social Security Act to have been disabled before the first day of COBRA continuation coverage and has not been determined to be no longer disabled at any time between the date of that disability determination and the first day of COBRA continuation coverage.

(d) The requirement of this paragraph (d) is satisfied if any of the qualified beneficiaries affected by the qualifying event described in paragraph (b) of this Q&A-5 provides notice to the plan administrator of the disability determination on a date that is both within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the qualifying event.

In particular, note that under the regulations, to qualify for the disability extension, the qualified beneficiary must provide notice to the plan of the disability determination on a date that is both:

- Sixty days after the date the determination is issued
- Before the end of the original 18-month maximum coverage period

requested a disability extension but was denied the extension by the plan. As we understand the facts, received a disability notice from the Social Security Administration but did not meet the plan's requirements (consistent with the regulations) to provide the plan with notice of the disability award within 60 days of the date of the award.

It is not clear from the information provided if the disability occurred before or within the first 60 days of the COBRA continuation coverage. The IRS has no procedure for requiring plans to provide longer periods for elections than required by the Code and regulations.

I hope this information is helpful. If you have any questions, please call me at
or at .

Sincerely,

Christine Ellison, Acting Chief,
Health and Welfare Branch,
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)