



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
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The Honorable Scott Perry  
Member, U.S. House of Representatives  
22 Chambersburg Street  
Gettysburg, PA 17325

Attention:

Dear Representative Perry:

I am responding to your inquiry dated June 30, 2017, on behalf of your constituent who asked for information about COBRA eligibility. Specifically, he asked about his spouse's eligibility for 36 months of COBRA continuation coverage (instead of 18 months) under section 4980B of the Internal Revenue Code (the Code). According to the information your constituent provided, he became entitled to Medicare benefits on \_\_\_\_\_, and his employment terminated on \_\_\_\_\_.

As explained below, the spouse of a covered employee can receive COBRA continuation coverage for 36 months if that employee became entitled to Medicare benefits *before* termination of employment. The 36-month period begins after the date the covered employee became entitled to Medicare coverage. This rule applies regardless of whether the entitlement is a qualifying event under the COBRA rules.

Generally, 18 months is the maximum COBRA continuation period for a qualified beneficiary<sup>1</sup> (which includes an employee's spouse<sup>2</sup>). However, if a "covered employee" becomes entitled to Medicare benefits before losing coverage because of termination of employment (which is a qualifying event for COBRA coverage),<sup>3</sup> then the maximum COBRA coverage period for a qualified beneficiary ends on the later of:

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<sup>1</sup> See Section 4980B(f)(2)(B)(i)(I) of the Code.

<sup>2</sup> See Section 4980B(g)(1)(A)(i) of the Code.

<sup>3</sup> See Section 4980B(f)(3)(B) of the Code.

- 36 months after the date the covered employee became entitled to Medicare benefits; or
- 18 months (or 29 months, if there is a disability extension) after the date of the covered employee's termination of employment or reduction of hours of employment.<sup>4</sup>

For purposes of this rule, a covered employee becomes "entitled to Medicare benefits upon the effective date of enrollment in either part A or B, whichever occurs earlier."<sup>5</sup>

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

Sincerely,

Denise Trujillo  
Chief, Health and Welfare Branch  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)

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<sup>4</sup> See Section 4980B(f)(2)(B)(i)(VII) and Q&A-4(d)(1) of Treasury Regulation Section 54.4980B-7. Revenue Ruling 2004-22, 2004-10 I.R.B. 553, referenced by your constituent, also notes the rule set forth in Q&A-4(d)(1) of § 54.4980B-7 regarding a covered employee who becomes entitled to Medicare *before* experiencing a qualifying event.

<sup>5</sup> See Q&A-3(b) and Q&A-4(d)(2) of Section 54.4980B-7 of the Code.