

RDS QUALIFYING COVERED RETIREES AND INDIVIDUALS RECEIVING COBRA COVERAGE

Question

An employer provides retiree drug coverage as well as coverage to actively employed workers and their family members. The employer has applied for the retiree drug subsidy (RDS). Can the employer treat individuals receiving COBRA coverage as "qualifying covered retirees?"

Background

In general, a qualifying covered retiree (QCR) is a Part D eligible individual who is enrolled in the sponsor's plan and who is not enrolled in Part D. (*See* 42 CFR 423.4 and 423.882 for the definitions of "Part D eligible individual" and "qualifying covered retiree"). See also the guidance with frequently asked questions on qualifying covered retirees at <http://www.cms.hhs.gov/EmployerRetireeDrugSubsid/>.

Under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), certain former employees, retirees, spouses, former spouses, and dependent children generally have the right to temporary continuation of health coverage when coverage would be lost due to certain specific events. For more information about COBRA, see e.g., frequently asked questions from the US Department of Labor at http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html.

Answer

A person considered to have coverage based on "current employment status" for MSP purposes is presumed to not be receiving retiree coverage for purposes of the RDS. For other people with coverage (including COBRA coverage) that is not based on current employment status, the sponsor determines whether they are receiving "retiree" coverage. That determination is generally based on the facts and terms of the sponsor's plan. *See* 42 CFR 423.882 (definition of qualifying covered retiree). However, CMS confirms that it would be reasonable to treat a spouse or dependent child who is a Part D eligible individual receiving COBRA coverage as a QCR if the circumstances involve a participant who is no longer working, such as a surviving spouse receiving COBRA coverage following a participant's death.

Note that for any COBRA recipient that can be counted as a QCR, the plan's actuary must account for the additional premium amount that COBRA recipients pay for prescription drug coverage in the retiree drug subsidy actuarial equivalence "net test." For example, if the COBRA beneficiaries are separated out as an individual benefit option under the sponsor's plan, assuming the option meets the gross test, it must be combined with another option in order to pass the net test because it will likely fail the net test on an individual basis.