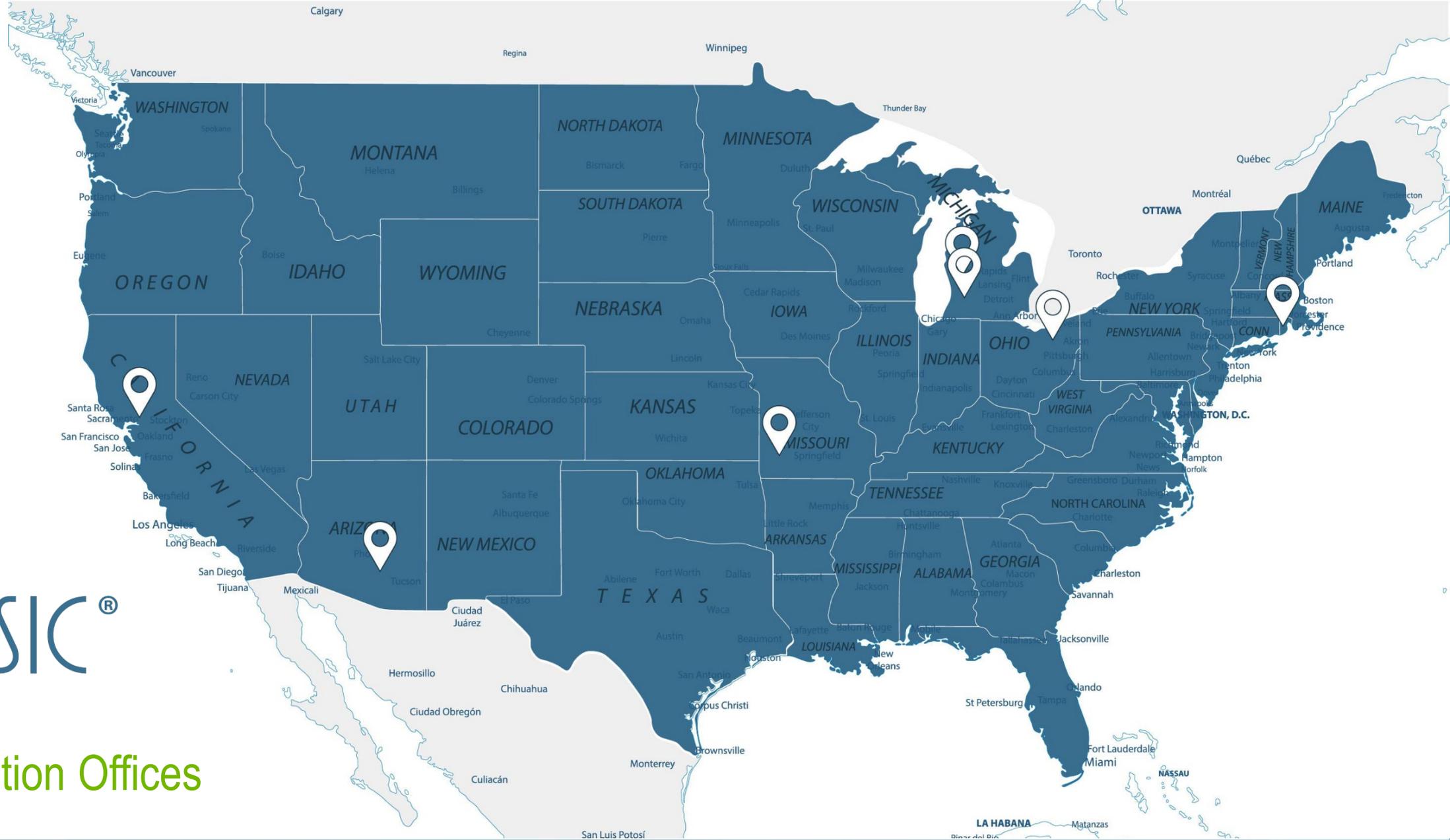




Understanding COBRA Regulations

Including New Regulation Changes During COVID-19





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➤ Presented by



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JD, LLM, Compliance Officer

Cat is the Compliance Officer here at BASIC. She has extensive experience working with employers and ERISA plan sponsors as an employee benefits attorney. Her umbrella of experience includes, but is not limited to, strategic benefit design and technical legal compliance under ERISA, COBRA, HIPAA, ACA, LMRA, FMLA, and MHPAEA. She holds an L.L.M. from the John Marshall Law School in employee benefits, a J.D. from the DePaul University College of Law, and a B.A. from Aquinas College.

➤ What is COBRA?

- “COBRA” is the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended
- Provides for continuation of existing group health plan coverage for qualifying employees, covered spouses and covered dependents
- Legally protected right under the Internal Revenue Code, Employee Retirement Income Security Act of 1974, and the Public Health Service Act

➤ Who Must Comply With COBRA?

- All employers with over 20 employees on 50% of their typical business days in the preceding calendar year
- Common Ownership
 - a controlled group of corporations (Code §414(b));
 - a group of trades or businesses under common control (Code §414(c));
 - an affiliated service group (Code §414(m)); and
 - certain other arrangements described in regulations (Code §414(o)).55
- Exceptions
 - Small employer plans, federal government plans, church plans
- Downsizing employer rule
 - Shrinking: subject to COBRA until calendar year after the average number of employees is less than 20 and can't drop COBRA for those individuals already covered by COBRA

➤ Who Qualifies?

- **Qualified Beneficiaries (“QB”)**
 - Covered employees (but only if, on the day before a qualifying event, they are covered under a plan by virtue of being covered employees, and only as to the qualifying events of termination of employment or reduction of hours);
 - Federally recognized spouses and dependent children of covered employees (but only if, on the day before a qualifying event, they are covered under a plan by virtue of being a covered employee's spouse or dependent child); and
 - Children born to, or adopted by, a covered employee during a period of COBRA continuation coverage
- **QB Rights** – QB have the same rights, under the same terms and conditions, as a similarly situated non-COBRA beneficiary (active employee)

➤ What is Eligible Coverage?

Eligible

- Medical
- Dental
- Vision
- Prescription
- Health FSA (unless limited obligation applies)
- HRA
- Certain EAPs

Not Eligible

- Dependent Care FSA
- HSA
- LTD
- STD
- Life Insurance

➤ Qualifying Events

- Voluntary Termination
- Involuntary Termination
 - Gross misconduct exception
- Reduction of Employee's Hours
 - Change in premium arrangement
- Death of Employee
- Divorce or Legal Separation
 - Removals in anticipation of the event
- Medicare Entitlement (in extremely rare circumstances)
- Dependent Child ceasing to be a dependent

➤ FMLA Leave of Absence

- Beginning of FMLA leave *is not* a qualifying event
- End of FMLA leave *is* a qualifying event *if* employee does not return to work
 - Even if employee did not maintain coverage during FMLA leave
 - Even if employee doesn't repay premiums in arrears during leave

➤ Events During COVID-19?

- What is considered a qualifying event?
 - Termination from employment due to COVID - yes
 - Temporary business closures where group health plan still offered - yes
 - Furlough resulting in reduction of hours
 - Yes, if below the requirement in group health plan document
 - If not, can amend to allow during the short term but must offer to everyone, must verify action is permitted by insurer and provide requisite ERISA notices
 - COVID related paid sick or family leave – no, if does not result in loss of benefits – if taken under emergency paid sick or expanded FMLA provisions, employer is mandated by law to maintain
 - Permanent business shut down with termination of group health plan - no

➤ Notices – Most Notable

- **Initial/General Notice** - Informs employees of their COBRA rights and responsibilities (generally within 90 days of commencement of plan coverage) QB
- **Election/Qualifying Event Notice** – Plan administrator informs all QBs of their right to continue health insurance under COBRA with reference to a specific Qualifying Event
 - Clock starts with triggering event, unless delayed employer rule is adopted and reflected in procedures (COBRA maximum period and notification period begins with loss of coverage)
 - Employer notice to plan administrator within 30 days, plan administrator to QB within 14 days (or 44 days total where employer and plan administrator are same)
- **Notice from QB to the plan administrator** - Divorce, Dependent ceasing to be a Dependent, Secondary Event, Disability Determination, or no longer deemed disabled

➤ Notices – Other Mandatory

- **Notice of unavailability** – where plan administrator determines that the QBs covered by the qualifying event notice are not entitled to COBRA (or second QE extension)
- **Notification of plan changes** – same schedule as SMMs
- **Notice of insignificant premium underpayment** - as soon as possible and give reasonable period for payment
- **Early termination** - as soon as administratively possible
- **ERISA disclosures & open enrollment materials** - SPD must contain COBRA information and can serve as initial notice if provided to all individuals covered under the Plan (e.g., spouse and dependents) so separate notice is advisable, SBCs, SMMs
- **Disclosure to health care providers** - during election period, the 45-day premium payment period, and the 30-day premium grace period
- **Conversion notice** - During the last 180 days of COBRA maximum coverage period

➤ Notices – Optional But Recommended

- **Expiration** – During the last 60 days of COBRA if terminating at maximum coverage period
- **Coupon Books/Invoices** – Should indicate they are reminders and not bills, and payment is due even if the coupon or invoice is not provided
- **Confirmation of COBRA election** – Can serve to eliminate confusion
- **Advance notice of premium changes** – DOL has informally advised that COBRA cannot be terminated for insufficient payment if QB not provided reasonable advance notice of increased premiums and opportunity to pay increased premiums
- **Late premium payment reminder letters**
- **Letters regarding loss of dependent status, or spouses or children dropped of coverage, eligibility for Medicare resulting in COBRA termination**

➤ Recent Regulatory Changes Impacting COBRA Administration

- On April 29, 2020, the DOL and IRS released regulations addressing COVID <https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>
- Defines the “Outbreak Period”
 - Runs retroactively from March 1, 2020, to 60 days after yet-to be announced end of National Emergency (or other date announced by the Agencies in future notifications)
- Extends COBRA deadlines for employers and QBs
- HHS indicated that it “concurs” with the relief and will adopt a non-enforcement policy for non-federal government plans

➤ Recent COBRA Regulation Changes

- **Extends notification periods for employers**
 - Provide employers with additional time to provide a COBRA election notice after a qualifying event occurs and permit notices to be furnished electronically
- **Extends payment grace periods for QBs**
 - QB will still be required to pay premiums
 - Will not be due until at least 60 days following the end of the Outbreak Period
 - Nonpayment will likely result in an interruption of coverage; however, coverage will be reinstated retroactively to prevent a gap in coverage once payments are made.
- **Extends election periods for all QB**
 - 60-day deadline to make election will not start running until the end of the Outbreak Period
- **Does not address need to furnish revised election notice or extended time frame**

COBRA Timeframes Impacted by COVID Regulations

	General	During Outbreak Period
Employer Qualifying Event Notification To QB	44 days to send notification	14 days after end of Outbreak Period
COBRA Election by Participant	60 days from postmark date	60 days after end of Outbreak Period
Premium Grace Period for Coverage	Initial 45 days after election of coverage; 30 days after first day of each month	60 days after end of Outbreak Period to bring all payments current
Notification of Qualifying Events by Participant (divorce, loss of dependency status, etc.)	60 days after the date of the event	60 days after the end of the Outbreak Period

➤ COBRA Premiums During Outbreak Period

- Call for Congress to provide subsidies like ARRA, but nothing yet
- Employers are not required to pay some or all the premiums during Outbreak Period
- Employers may choose to pay some or all the premiums for terminated or furloughed employees, but....
 - Arrangement may provide a discriminatory benefit to HCE
 - May complicate later access to individual coverage through the Exchange (voluntary termination of COBRA before maximum period ends does not trigger special enrollment right under the Exchange – should be allowed for the cessation of employer subsidy but easy for employee to be confused in process)
 - May be better to provide cash payment and allow employee to determine best option for themselves

➤ COBRA Premiums During Outbreak Period

- Should encourage individuals to pay monthly
- Monthly payments must be allowed
- Premium payments will not be due until at least 60 days following the end of the yet-to-be determined Outbreak Period
- Plan may pend claims until election and payment received
 - Coverage may be suspended due to nonpayment during Outbreak Period
 - Will be reinstated retroactively once payment has been received
- Need to work with insurers to determine how best to proceed

➤ Practical Application

- In Q&A sessions held after the regulations were issued, the DOL provided clarification regarding permissible COBRA administration strategies during the Outbreak Period
 - The DOL agreed that group health plans retain the right to terminate coverage if payment is not received by the established due date.
 - The agency further acknowledged that while the language issued in the published regulations does not explicitly permit such action, the regulations also do not revoke an employer's right to suspend coverage, pending payment of premiums
 - As a result, the DOL opined that if this practice was permissible under the established plan rules prior to the issued rules, it may remain in effect

➤ Practical Application

- **The following citation from the DOL's Model Election Notice is still applicable during the COVID extension period**

Although periodic payments are due on the dates shown above, you will be given a grace period of 30 days after the first day of the coverage period to make each periodic payment. Your continuation coverage will be provided for each coverage period as long as payment for that coverage period is made before the end of the grace period for that payment. However, if you pay a periodic payment later than the first day of the coverage period to which it applies, but before the end of the grace period for the coverage period, your coverage under the Plan will be suspended as of the first day of the coverage period and then retroactively reinstated (going back to the first day of the coverage period) when the periodic payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.

➤ Practical Application

- Include broad COVID-19 statement now
 - *In response to the COVID-19 pandemic, the IRS and Department of Labor have released new regulations that extend election periods and premium grace periods for COBRA payments. If you need additional time to elect and make payments, please contact _____ to review options that may be available and for additional information. Please be advised that there will likely be an interruption in your coverage due to nonpayment. _____ is not responsible for delays to reinstatement once payment has been received.*
- Update Non-payment Notices
 - *Based upon our records, we have not received a full premium payment within the standard designated timeframes as described below. During the COVID-19 National Emergency, these timeframes have been extended. If you wish to exercise your right to relief, the grace period for your payment(s) will be measured from the **end date** of the National Emergency. You must notify _____ in writing, with your payment, of your intention to continue your benefits under your *National Emergency rights.**
- Once Outbreak Period ends, send notices with specific election and premium payment deadlines based on actual Outbreak Period date

➤ HIPAA Special Enrollment Rights & Claims Deadlines During COVID-19

- HIPAA Special Enrollment Deadlines

- *HIPAA Special Enrollment Period* – The 30-day (in some instances, 60-day) deadline to request enrollment in a group health plan following a special enrollment event (e.g., birth, adoption or placement for adoption of a child, marriage, loss of other health coverage, or eligibility for a state premium assistance subsidy)
- Deadline is pended during the Outbreak Period – may have to retroactively cover once employee elects coverage - back to March 1, 2020

- Claims and Appeal Deadlines

- The deadline under the plan by which participants may file a benefit claim (under the terms of the plan) and the 180-day (for group health plans), 60-day (for other welfare benefit plans) deadlines for appealing an adverse benefit determination, 4-month deadline for requesting federal external review process, deadline for perfecting an external review request
- Deadlines are pended during the Outbreak Period – unclear whether responsibility is on plan or participant to reach out for denied claims on or after March 1, 2020
- No pended deadlines for **plans to adjudicate claims and appeals – relief only applies to participants**

➤ Updated Model Notices for Medicare

- Released May 1, 2020, with a set of FAQs
 - <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-model-notices.pdf>
- Did not address COVID-19
- Provide additional information to address COBRA's interaction with Medicare
 - Explain that there may be advantages to enrolling in Medicare before, or instead of, electing COBRA
 - Highlights that if an individual is eligible for both COBRA and Medicare, electing COBRA coverage may impact enrollment into Medicare as well as certain out-of-pocket costs

➤ New Model Notice Provision

Can I enroll in Medicare instead of COBRA continuation coverage after my group health plan coverage ends?

In general, if you don't enroll in Medicare Part A or B when you are first eligible because you are still employed, after the initial enrollment period for Medicare Part A or B, you have an 8-month special enrollment period* to sign up, beginning on the earlier of

- The month after your employment ends; or
- The month after group health plan coverage based on current employment ends.

If you don't enroll in Medicare Part B and elect COBRA continuation coverage instead, you may have to pay a Part B late enrollment penalty and you may have a gap in coverage if you decide you want Part B later. If you elect COBRA continuation coverage and then enroll in Medicare Part A or B before the COBRA continuation coverage ends, the Plan may terminate your continuation coverage. However, if Medicare Part A or B is effective on or before the date of the COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even if you enroll in the other part of Medicare after the date of the election of COBRA coverage.

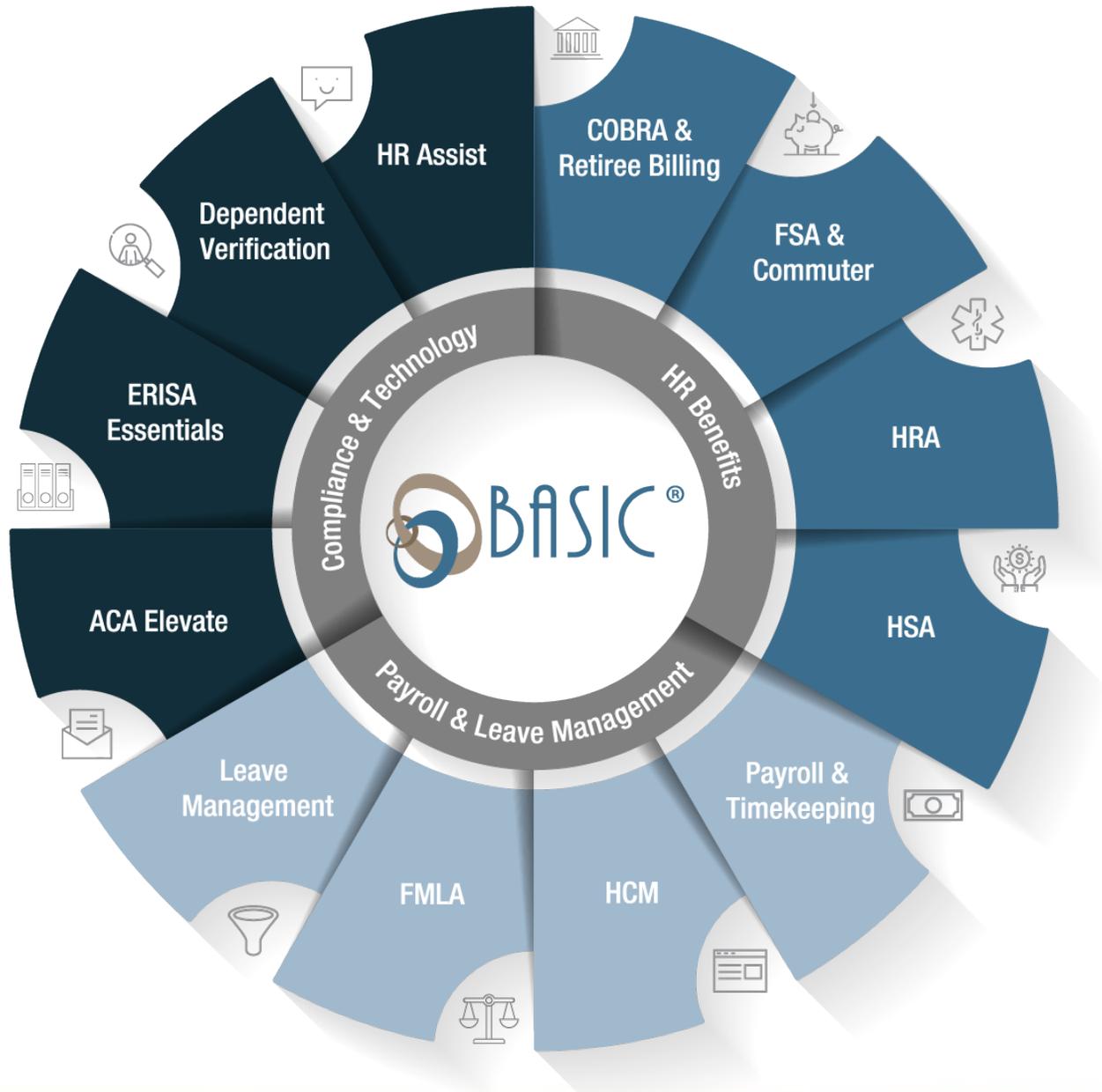
If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA will pay second. Certain COBRA continuation coverage plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.

For more information visit <https://www.medicare.gov/medicare-and-you>.

*<https://www.medicare.gov/sign-up-change-plans/how-do-i-get-parts-a-b/part-a-part-b-sign-up-periods> (These rules are different for people with End Stage Renal Disease (ESRD))

QUESTIONS





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