



LEGAL HOTLINE FOR TEXANS

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COBRA

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The Legal Hotline for Texans (LHT) is a telephone hotline providing free legal advice and consultation and other free legal services to Texans Age 60 and Older or Eligible for Medicare; Crime Victims Age 60 and Older and their Family Members and Authorized Claimants; and Pension and Retirement Plan Employees, Participants and Beneficiaries.

Eligible Clients can consult with an attorney of the Legal Hotline for Texans free of charge by calling one of the phone numbers listed above. If clients would like to consult with an attorney in their communities, or if ongoing representation by an attorney is needed, the Legal Hotline for Texans may be able to make a referral.

Depending on individual circumstances and local availability, such a referral may be to an organization providing free attorneys to low income persons, or may be to an attorney on the Legal Hotline for Texans' reduced-fee panel, or may be to a statewide or local lawyer referral service.

The Legal Hotline for Texans is a project of the Texas Legal Services Center with support from the Texas Department of Aging and Disability Services (DADS), the U.S. Centers for Medicare and Medicaid Services (CMS), the U.S. Administration on Aging (AoA), and the Texas Equal Access to Justice Foundation through the Texas Basic Civil Legal Services Program (BCLS) and the Texas Crime Victims Civil Legal Services Program (CVCLS).

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WHAT ARE MY COBRA RIGHTS?

For many families, health insurance is one of the most important benefits provided by an employer. Unfortunately, it used to be that when a worker lost his or her job, changed employment, or got divorced their health insurance coverage was at risk.

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) so that now, terminated employees and their families who may lose health insurance coverage because of termination of employment, death, divorce, or other life events may be able to continue the coverage under the employer's group health plan for themselves and their families.

If you are eligible for coverage, your health plan must give you the right to choose to continue health insurance coverage under the plan.

What is the Law?

COBRA amends the Employee Retirement Income Security Act (ERISA), and other federal law to give certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. COBRA coverage is usually going to be more expensive than coverage for an active employee because usually the employer pays part of the premium for active employees while COBRA participants generally pay the entire premium themselves.

Some employers "self-fund" insurance coverage for their employees and may hire an insurance company to administer the coverage. State governments are not allowed to regulate self-funded plans because federal law (i.e. ERISA) authorize these plans and regulatory authority rests solely with the United States Department of Labor.

But many employers purchase insurance coverage from an insurance company or health maintenance organization. These plans are fully regulated by the State of Texas, which is among the states that have passed "mini" COBRA type laws. In Texas, state law now requires that when your job ends or COBRA coverage ends, all group plans must offer you the chance to continue your group coverage for six months. Before the continuation period ends, you will also receive information about how to enroll in the Health Insurance Risk Pool. The six month coverage begins after any federal COBRA extension period ends, or immediately if COBRA does not apply. Thus, if you are eligible and opt for COBRA coverage, you may have a total of 24 months to find a new job and health coverage before having to apply to the Texas Health Insurance Pool. Note that Texas does not require companies to offer conversion from group coverage to individual policies.

Who Is Entitled to Benefits?

There are three elements to qualifying for COBRA benefits.

Plan Coverage

Group health plans for employers with 20 or more employees are subject to COBRA, and both full- and part-time employees are counted.

Qualified Beneficiaries

A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event and can be an employee, the employee's spouse, or an employee's dependent child. In certain cases a retired employee, his or her spouse and children may also be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary.

If an employee is covered by a COBRA governed plan, even for one day, COBRA coverage must be made available to the qualified beneficiaries if a qualifying event occurs and that covered employee loses plan coverage because of that qualifying event. It is entirely possible that a newly-hired employee could be covered for only one day and then terminate or experience a qualifying event, resulting in rights under COBRA.

The right to elect continued coverage may not be conditioned on the qualified beneficiaries insurability. Each qualified beneficiary has separate COBRA election rights.

Qualifying Events

"Qualifying events" are certain specific events that would cause an individual to lose health care coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer coverage under COBRA.

The qualifying events for employees are:

- Voluntary or involuntary termination of employment for reasons other than "gross misconduct";
- Reduction in the number of hours of employment.

The qualifying events for spouses are:

- Voluntary or involuntary termination of the covered employee's employment for any reason other than "gross misconduct";
- Reduction in the number of hours worked by the covered employee;
- Covered employee's becoming entitle to Medicare;
- Divorce or legal separation of the covered employee;
- Death of the covered employee.

The qualifying events for dependent children are the same as those for the spouse with one addition:

- Loss of "dependent child" status under the plan rules.

Coverage

An employee is generally eligible for 18 months of COBRA health care coverage, and an employee's spouse or dependent children may be eligible for up to 36 months COBRA health care coverage.

Coverage begins on the date that coverage would otherwise have been lost by reason of a qualifying event and will end at the end of the maximum period. Coverage may end early if:

- Premiums are not paid on a timely basis;
- The employer ceases to maintain any group health plan;
- After the COBRA election, coverage is obtained with another employer group health plan that does not contain any exclusion or limitation with respect to any preexisting condition of the beneficiary; and,
- After the COBRA election, a beneficiary becomes entitled to Medicare benefits. If, however, Medicare is obtained prior to a COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.

Note that some plans allow participants and beneficiaries to convert group health coverage to an individual policy. If this option is available from the plan, you have the right to exercise the option under COBRA when you reach the end of your COBRA coverage. The option must be given to enroll within 180 days before COBRA coverage ends. The premium for this type of policy will likely be more than the group plan, and the coverage levels may be lower. The conversion option is lost if the beneficiary ends COBRA coverage before reaching the end of the maximum period of COBRA coverage.

Notice and Election Procedures

Notice Procedures Generally

General COBRA rights must be described in the summary plan description (SPD) that all participants receive. Employers are required to furnish modified and updated SPDs containing certain plan information and summaries of material changes in plan requirements. Plan administrators must automatically furnish the SPD 90-days after a person becomes a participant or a beneficiary begins receiving benefits, or within 120-days after the plan is first subject to the reporting and disclosure provisions of ERISA.

Initial Notice

Generally, an initial notice describing COBRA rights must be furnished to covered employees and their spouses at the time coverage under the plan commences.

Other Notices

Employers must notify plan administrators of a qualifying event within 30-days after an employee's death, termination, reduced hours of employment or entitlement to Medicare.

A qualified beneficiary must notify the plan administrator of a qualifying event within 60-days after divorce or legal separation or a child's ceasing to be covered as a dependent under plan rules.

Plan administrators, upon receiving notice of a qualifying event, must provide an election notice to the qualified beneficiaries of their right to elect COBRA coverage. The notice must be provided in person or by first-class mail within 14-days after the plan administrator receives notice that a qualifying event has occurred.

The time frame for providing notices may be extended beyond the 14- and 30-day requirements if allowed by plan rules. Also, if the plan rules allow, employers may be relieved of the obligation to notify plan administrators when employees terminate or reduce their work hours.

Qualified beneficiaries who want to take advantage of the 11-month disability extension must notify plan administrators of the disabled determinations.

Election

Qualified beneficiaries must be given an election period, at least 60-days, during which each qualified beneficiary may choose whether to elect COBRA coverage. The period is measured from the later of the coverage loss date or the date the COBRA election notice is provided. COBRA coverage is retroactive if elected and paid by the qualified beneficiary.

Each qualified beneficiary may independently elect COBRA coverage. A covered employee or the covered employee's spouse, however, may elect COBRA coverage on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child.

If a qualified beneficiary waives COBRA coverage during the election period, he or she may revoke the waiver of coverage before the end of the election period. A beneficiary may then elect COBRA coverage. Then, the plan need only provide continuation coverage beginning on the date the waiver is revoked.

Covered Benefits

Qualified beneficiaries must be offered coverage identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan, generally, the same coverage that the qualified beneficiary had immediately before the qualifying event.

A change in benefits under the plan for active employees will also apply to qualified beneficiaries. And if that change in benefits is a termination of coverage, then COBRA beneficiaries will also have coverage terminated.

Paying for COBRA Coverage

Generally beneficiaries will be required to pay for COBRA health coverage. The premium cannot exceed 102% of the cost to the plan for similarly situated individuals who have not incurred a qualifying event. This amount includes both the portion paid by the employees and any portion paid by the employer before the qualifying event, plus 2% for administrative costs.

For qualified beneficiaries receiving the 11-month disability extension of coverage, the premium for those additional months may be increased to 150% of the plans total cost of coverage.

The plan must allow you to pay on a monthly basis if you ask to do so, and the plan may allow you to make payments at other intervals (e.g. weekly or quarterly).

The initial premium must be made within 45-days after the date of the COBRA election by the qualified beneficiary. Payment is considered made on the date it is sent to the plan.

If premiums are not paid by the first day of the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate the coverage retroactively to the beginning of the period for coverage.

If the amount of the payment made to the plan is made in error but is not significantly less than the amount due, the plan is required to notify you of the deficiency and grant a reasonable period for paying the difference (for this purpose, 30-days is considered reasonable). The plan is not obligated to send monthly premium notices.

Claims Procedures

Health plan rules must explain how to obtain benefits and must include written procedures for processing claims. Claims procedures must be described in the SPD.

The Family Medical Leave Act

The Family and Medical Leave Act (FMLA) requires an employer to maintain coverage under any “group health plan” for an employee on FMLA leave under the same conditions coverage would have been provided if the employee had continued working. Coverage provided under the FMLA is NOT COBRA coverage, and FMLA leave is not a qualifying event under COBRA. A COBRA qualifying event may occur, however, when an employer’s obligation to maintain health benefits under FMLA ceases, such as when an employee notifies an employer of his or her intent not to return to work.

The Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 made 421 changes to COBRA continuation coverage rules. The changes were in three areas and related to a disability

extension, the definition of qualified beneficiary, and the duration of COBRA continuation coverage.

Disability Extension

Individual who are disabled within the meaning of the Social Security Act are subject to special rules that may extend coverage an additional 11 months to the individual and other individuals who are qualified beneficiaries with respect to the same qualifying event.

If a qualified beneficiary is determined to have been disabled (under the Social Security Act) within 60-days of COBRA coverage, then that qualified beneficiary and all of the qualified beneficiaries in his or her family may be able to extend COBRA continuation coverage for up to an additional 11 months. Qualified beneficiaries should be aware, however, that they may lose all rights to the additional coverage if notice of the determination is not provided within 60-days of the date of the determination and before the expiration of the 18-month COBRA coverage period. The qualified beneficiary who is disabled or any qualified beneficiaries of his or her family may notify the plan administrator of the determination.

Definition of Qualified Beneficiary

Initially, in order to be a qualified beneficiary under COBRA, an individual had to be covered under a group health plan on the day before the event that caused the loss of coverage. Under HIPAA (effective 9/1/1997) the requirement changed such that a child who is born to the covered employee, or who is placed for adoption with the covered employee, during a period of COBRA coverage, is also a qualified beneficiary.

Duration of COBRA Coverage

Under COBRA there are situations in which a group health plan may stop making COBRA coverage available earlier than usually permitted. One of those situations is where the qualified beneficiary obtains coverage under another group health plan. Under current law, if the other group health plan limits or excludes coverage for any preexisting condition of the qualified beneficiary, the plan providing the COBRA coverage cannot stop making the COBRA coverage available merely because of the coverage under the other group health plan. HIPAA limits circumstances in which plans can apply exclusions for preexisting conditions. If a group health plan limits or excludes benefits for preexisting conditions but because of the HIPAA rules those limits or exclusions would not apply to an individual receiving COBRA coverage, then the plan providing the COBRA coverage can stop making the COBRA coverage available.

Protect Your Rights

If you plan to skip COBRA, because it's expensive or you hope to find another job that offers group health insurance, be careful. You should consider what could happen if your job search

drags on longer than you expected, you are diagnosed with a chronic or serious illness, or, if you are a woman wanting to start a family and become pregnant. If you create a gap in health coverage of more than 60 days you may lose health insurance rights under HIPAA, which guarantees that people who have continuous health coverage, without a gap of more than 60 days, cannot be denied insurance even if they have pre-existing conditions. So, if you forgo COBRA and wind up with a 90-day gap in coverage, you lose HIPAA protection when you later decide to buy insurance. This could lead to serious health and financial consequences.

If you have no pre-existing conditions and decide against COBRA coverage, you can still consider buying individual insurance or even a short-term major medical policy to tide you over until you land a new job with health benefits.

Employers are required to provide COBRA coverage that is identical to health coverage you had as an active employee. They cannot provide a less expensive plan. But employers can, but are not required to, give you the option of dropping such 'non-core' benefits as dental or vision care.

During the 60-day COBRA election period, you might initially decide not to pay for COBRA coverage. As long as the election period has not expired however, you can change your mind and revoke your waiver. In this case, COBRA coverage would start on the day the waiver was revoked. COBRA coverage would not be retroactive to the date you lost employer-sponsored coverage.

Final Notes

- Premium payments – After you elect COBRA coverage, you have to pay the first premium within 45-days. The first premium is likely to be high because it covers the period retroactive to the date coverage ended through your employer. Successive payments are due according to health plan requirements, but COBRA rules allow for a 30-day grace period after each due date for payment.
- Notification rights – Employers that fail to comply with the notification rules put in place by COBRA face fines of up to \$110 for every day that no notice is sent after the deadline. In addition, the IRS can assess an excise tax against a company that does not comply with COBRA regulations.
- Life Insurance – COBRA makes no provisions for life insurance.
- Conversion plans – If the health plan offers the option of converting from a group plan to an individual policy under COBRA, you must be given that option and allowed to convert within 180 days before COBRA ends. But you will pay individual, not group, rates.
- Moving – If you relocate out of your COBRA health plans coverage area, you will lose your COBRA benefits. The employer is not required to offer you a plan in your new area.
- Premium notices – Neither the health plan nor the employer are required to send monthly premium notices.

- Disability – People eligible for Social Security disability benefits may receive COBRA coverage for 29 months.
- Texas Law – All group health plans are required by Texas law to offer six months continuation coverage. The continuation coverage begins after COBRA coverage ends, or immediately, if COBRA coverage does not apply. So COBRA coverage and state mandated continuation coverage allow you up to 24 months of health care coverage before you would have to apply for coverage as a part of the Texas Health Insurance Pool.

The Texas Health Insurance Pool is a program created by the Texas Legislature to help Texas residents that cannot get health insurance because of a health condition, or who are considered “federally eligible” individuals, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Insurance available through the Texas Pool is not free, in fact, it can be quite expensive. But you should be aware of the program, and should contact the Texas Department of Insurance to find out more.