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Don Darden

*Municipal Technical Advisory Service*

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## **CITIES REQUIRED TO EXTEND HEALTH INSURANCE COVERAGE TO FORMER EMPLOYEES AND DEPENDENTS**

by  
By Don Darden  
Municipal Management Consultant

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 was passed by Congress in recognition of the fact that increasing medical costs have transformed health benefits from a privilege to a necessity for most Americans.

The COBRA law creates an opportunity for people to retain this important benefit by requiring employers to extend the coverage that the employee or dependent had immediately before qualifying for continuation coverage. An employee or dependent may have had medical, hospitalization, dental, vision and prescription benefits under a single plan or under multiple plans provided by the employer. The covered employee or beneficiary generally has the right to elect to continue coverage in any or all of the health plans. If the employer changes the benefits under the plan for active employees, the change will apply to qualified beneficiaries.

### **Does COBRA Apply to Your Municipality?**

COBRA applies to all cities with 20 or more employees on 50 percent of the city's typical business days in the previous calendar year. For purposes of applying the 20-employee limit, the employer must count agents, independent contractors, and corporate directors (city council or board members) if such individuals are eligible to participate in a group health plan provided by the city. Part-time employees must be counted as employees regardless of the number of hours they work.

When a city increases its work force to the point that it normally employs 20 or more people, the health plan becomes fully subject to COBRA *beginning with the next calendar year*. If a city's work force drops below 20 employees, employees remain eligible for COBRA coverage *during the calendar year following the year in which the employer had at least 20 employees*.

## Qualifying Events for Employees

A “qualifying event” refers to the specific event that would cause a loss of employer-provided coverage and trigger the coverage continuation option. Qualifying events are:

- Voluntary or involuntary termination of employment for reasons other than “gross misconduct.” Cities are cautioned to consult with their attorney concerning acts that constitute gross misconduct. Firing an employee does not necessarily imply an act of gross misconduct;
- Reduction in the number of hours of employment;
- Military service.

## Qualifying Events for Beneficiaries

A “qualified beneficiary” refers to an employee or employee’s spouse or dependent who is or was covered under the employer-provided health plan and who has experienced a qualifying event. 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 hours worked by the covered employee;
- Covered employee becoming eligible for Medicare;
- Divorce or legal separation of the covered employee;
- Death of the covered employee.

## Qualifying Events for Dependent Children

The qualifying events for dependent children are the same as for the spouse with one addition: loss of “dependent child” status under the plan rules.

## Extended Coverage

Extended coverage is for employees, spouses and dependents in accordance with the following schedule:

- Up to 18 months for covered employees, spouses, and dependents;
- Up to 36 months for spouses and dependents facing a loss of employer-provided coverage due to an

employee’s death, a divorce or legal separation, or certain other qualifying events. A leave of absence without pay is an example of another qualifying event.

Modification of COBRA requirements were made upon enactment of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, which:

- Expanded the definition of “qualified beneficiary” to include a child who is born or adopted by the covered employee during the period of continuation coverage;
- Provided an additional 11 months of COBRA coverage (up to 29 months total) for employees who are disabled at any time during the first 60 days of COBRA coverage. This applies as well to the disabled employee’s non-disabled qualified beneficiaries;
- Limits COBRA coverage for pre-existing condition exclusions, where other HIPAA rules on portability have eliminated those exclusions.

**Extended health insurance under COBRA is at the expense of the employee or dependent.**

## Multiple Qualifying Events

COBRA provides that qualified beneficiaries entitled to 18 months of COBRA continuation coverage due to termination of employment or reduction in hours can extend the length of their coverage period if a second qualifying event occurs during the initial 18 month period. The extension generally cannot exceed 36 months from the date of the first qualifying event. It applies to individuals who were qualified beneficiaries under the plan as of the first qualifying event and who were covered under the plan at the time of the second qualifying event.

An exception to the general rule governing multiple qualifying events applies in cases in which the employee becomes entitled to Medicare prior to the expiration of an existing period of continuation coverage that was triggered by a change in employment status. If a covered employee becomes entitled to Medicare before the expiration of the 18-month period, the worker’s COBRA coverage ends; however, other qualified beneficiaries, such as the employee’s spouse, become eligible for an additional 36 months of continuation coverage. The Small

Business Job Protection Act of 1996 amended COBRA rules to limit continuation coverage in such cases to no more than 36 months.

## **How COBRA Rights are Triggered**

When a qualifying event, as defined above, occurs, the employer is obligated to offer COBRA coverage. COBRA specifically covers these qualifying events:

- Death of a covered employee;
- Employee’s change in employment status such as termination or reduction in working hours;
- Divorce or legal separation of the employee;
- Employee’s entitlement to Medicare;
- A dependent child’s loss of eligibility under the health plan;
- Bankruptcy of the employer;
- An employee called to military duty (unless the employer continues normal coverage while the employee is on military leave).

## **Termination of COBRA Coverage**

COBRA coverage may be terminated before the end of the coverage period of 18, 29 or 36 months or the lifetime coverage provided to retirees whose coverage terminated as the result of employer bankruptcy, under any of these circumstances:

- All health plans are terminated;
- The beneficiary fails to pay COBRA premiums;
- The beneficiary becomes covered under any other group health plan that contains no restrictions or limitations on coverage of a pre-existing condition;
- The beneficiary becomes eligible for Medicare;
- A determination that the beneficiary is a no longer disabled.

## **COBRA Election Rules and Procedures**

MTAS has developed a “model continuation notice” for cities (following) even though beneficiaries are not required to make their election on a specific form. Most employers use election forms along with an explanation of the COBRA law to help document that beneficiaries were fully notified of their COBRA rights at the time of their election.

Qualified beneficiaries may waive their rights to continuation coverage under COBRA. However, qualified beneficiaries must be permitted to revoke their waiver if they change their minds and decide to elect COBRA coverage at any time during the election period. If a qualified beneficiary revokes a waiver, coverage does not have to be provided for any period before the waiver.

There is a 60-day time limit on the election period allowed qualified beneficiaries to exercise their COBRA rights. This election period begins on the later of:

- The date that the qualified beneficiary would lose coverage as a result of a qualifying event;
- The date that the qualified beneficiary is notified of his or her right to elect continuation coverage.

**MODEL NOTICE OF HEALTH COVERAGE  
CONTINUATION RIGHTS UNDER COBRA  
(Consolidated Omnibus Budget Reconciliation Act)**

*(City, State)*

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On April 7, 1986, Congress enacted Public Law 99-272, Title X, which requires that most employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health coverage (called “continuation coverage”) at group rates in certain instances where coverage under the plan would otherwise end. This notice is intended to inform you, in a summary fashion, of your rights and obligations under the continuation coverage provisions of the new law. [Both you and your spouse should take the time to read this notice very carefully.]

If you are an **employee** of       *(City)*       covered by       *(Group Health Plan Name)*       you have the right to choose this continuation coverage if you lose your health coverage because of a reduction in your hours of employment or the termination of your employment for reasons other than “gross misconduct” on your part.

If you are the **spouse** of an employee covered by       *(Group Health Plan Name)*       you have the right to choose continuation coverage for yourself if you lose group health coverage under       *(Group Health Plan Name)*       for any of the following four reasons:

1. The death of your spouse;
2. A termination of your spouse’s employment (for reasons other than gross misconduct) or reduction in your spouse’s hours of employment;
3. Divorce or legal separation from your spouse;
4. Your spouse becomes eligible for Medicare.

In the case of a **dependent child** of an employee covered by       *(Group Health Plan Name)*       you have the right to continuation coverage if group health coverage under       *(Group Health Plan Name)*       is lost for any of the following five reasons:

1. The death of a parent;
2. The termination of a parent’s employment (for reasons other than gross misconduct) or reduction in a parent’s hours of employment;
3. Parent’s divorce or legal separation;
4. A parent becomes eligible for Medicare;
5. The dependent ceases to be a “dependent child” under       *(Group Health Plan Name)*       .

Under COBRA, the employee – or a family member – is responsible for informing the city’s plan administrator of a divorce, legal separation, or a child losing dependent status under       *(Group Health Plan Name)*       .       *(City)*       has the responsibility to notify       *(Name of Plan Administrator)*       of the employee’s death, termination of employment, reduction in hours, or Medicare eligibility.

When (Name of Plan Administrator) is notified that one of these events has occurred, (Name of Plan Administrator) will in turn notify you that you have the right to choose continuation coverage. Under the new law, you have at least 60 days from the date you would lose coverage because of one of the events described above to inform (Name of Plan Administrator) that you want continuation coverage.

If you do not choose continuation coverage, your group health insurance will end.

If you choose continuation coverage, (City) is required to give you coverage, which, as of the time coverage is being provided, is identical to the coverage provided under the plan to similarly situated employees or family members. The new law requires that you be afforded the opportunity to maintain continuation coverage for three years unless you lost group health coverage because of a termination of employment or reduction in hours. In that case, the required continuation coverage may be cut short for *any* of the following five reasons:

1. (City) no longer provides group health coverage to any of its employees;
2. The premium for your continuation coverage is not paid;
3. You become an employee covered under another group health plan;
4. You become eligible for Medicare;
5. You were divorced from a covered employee and subsequently remarry and are covered under your new spouse's group health plan.

You do not have to show that you are insurable to choose continuation coverage. However, under COBRA you may have to pay all or part of the premium for your continuation coverage. COBRA also provides that at the end of the 18-month or three-year continuation coverage period, you must be allowed to enroll in an individual conversion health plan provided under (Group Health Plan Name).

COBRA applies to (Group Health Plan Name) beginning on the applicable date under Section 10002 (d) of COBRA. If you have any questions about COBRA, please contact (Plan Administrator Name and Business Address). Also, if you have changed marital status, or you or your spouse have changed addresses, please notify (Plan Administrator Name) at the above address.

The U.S. Department of Health and Human Services administers the continuation coverage law as it affects public sector health plans. Information about COBRA provisions for public sector employees is available from the:

U.S. Department of Health and Human Services  
Division of Cost Allocations (COBRA)  
Room 1067, Cohen Building  
330 Independence Ave., S.W.  
Washington, D.C. 20201

## For More Information

If you have questions about your municipality's responsibilities under COBRA please contact your MTAS Management Consultant.

Or, call the **MTAS Answer Line** to receive quick answers to short questions: **(888) 667-MTAS (6827)**. You also may visit our Web site at **www.mtas.utk.edu**.

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## MTAS OFFICES

### **Knoxville** (Headquarters)

Phone: (865) 974-0411

Fax: (865) 974-0423

### **Johnson City**

Phone: (423) 854-9882

Fax: (423) 854-9223

### **Nashville**

Phone: (615) 532-6827

Fax (615) 532-4963

### **Jackson**

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Fax: (731) 425-4771

### **Martin**

Phone: (731) 587-7055

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