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## Technical Bulletins: Required Group Health Care Coverage for Former Employees and Dependents

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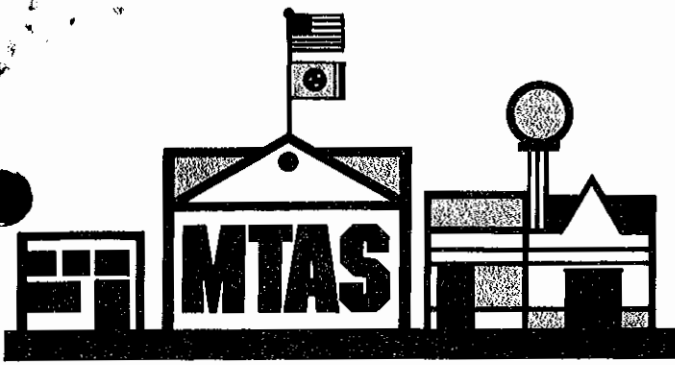
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# TECHNICAL BULLETIN

MUNICIPAL TECHNICAL ADVISORY SERVICE  
THE UNIVERSITY OF TENNESSEE  
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

July 23, 1986

## REQUIRED GROUP HEALTH CARE COVERAGE FOR FORMER EMPLOYEES AND DEPENDENTS

by M. Michael Tallent

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires cities with more than 20 employees, that offer health care plans, to extend continuing health care coverage to their employees or their dependents when certain "qualifying events" have occurred. These "qualifying events" include the death, termination or reduction in hours of the covered employee, the covered employee becoming entitled to certain Social Security benefits, the divorce or legal separation of the covered employee from his or her spouse, and a dependent child ceasing to be a dependent child under the terms of the health insurance plan. Before COBRA was passed, many employee health insurance plans ended coverage for employees or their dependents when any of those events occurred. COBRA changes all of that for any employee health insurance plan which begins, or is renewed, after June 30, 1986. However, COBRA permits a city to offer the extended health insurance coverage at the expense of the beneficiary.

Employees of a city covered by this requirement have the right to choose the continuation coverage for 18 months if they lose their group health coverage because of a reduction in hours of employment, or because of "termination." Where termination was for reasons of "gross misconduct" though, the city is not required to offer continuation coverage. Whether the word "termination" includes voluntary terminations and what constitutes "gross misconduct" is not clear from Title X. However, based upon the protective purpose of the law and the practice of federal agencies in interpreting protective laws broadly in favor of who they are designed to protect, municipal governments would be wise to assume that the federal regulations interpreting Title X will provide that "termination" includes employees who voluntarily quit and that the term "gross misconduct" will be interpreted very narrowly against municipal governments and in favor of employees.

Spouses of city employees of a city covered by this requirement have the right to choose the continuation coverage for 36 months if they lose their group health coverage because of the death of their spouse, termination of the spouse's employment or reduction in the spouse's hours of employment, divorce or separation from the spouse, or where the spouse becomes eligible for Medicare.

Dependent children of covered city employees have the same rights as spouses. In addition, they have the right to choose the continuation coverage for 36 months if they lose their group health coverage because they cease to be dependent children under the terms of the health plan. In many health plans this happens when dependent children turn 18.

If a city's health plan provides a conversion option, that option is extended to employees and qualified beneficiaries after their 18 or 36 month extended coverage period has ended.

The employer has the right to impose the cost of the extended coverage on the individuals and dependants who exercise their option for the coverage. They can be charged up to 102% of the cost of coverage (premium) including any costs that were formerly paid by the city, and they can be required to make these premium payments monthly.

When the city's plan becomes subject to Title X of COBRA, the city must notify employees and spouses of the expanded coverage option. The surest means of notification would be by a mailed letter. The U.S. Department of Labor has issued guidance on the form the notice should take pending the issuance of regulations. Attached is the DOL model notice form which your city should use to notify your employees of their rights under Title X when your city begins or renews its health insurance plan. The U.S. Department of Labor has taken the position that as a matter of enforcement policy, the use of the model notice will demonstrate "good faith" compliance with the notice requirements of Title X.

After the expanded coverage is available, it would be triggered either by: (1) the employee or beneficiary notifying the health plan administrator of a change in family status, i.e., separation or divorce, etc.; or (2) the city notifying the plan administrator within 30 days of a death, termination, or entitlement to Medicare benefits of any employee. Following this notification the plan administrator must, within 14 days, notify potential beneficiaries of their right to opt for the coverage. The beneficiaries would then have at least 60 days to decide if they want to purchase the coverage from the city.

The employer may end extended coverage before the expiration of the applicable 18 or 36 month extended coverage period when:

- The beneficiary becomes covered under another employer plan. This could occur, for example, when a terminated employee obtains new employment and become covered under his new employer's health insurance plan, or when a widow, widower or divorced person remarries and takes coverage as a dependent under their new spouse's group health care plan.
- The beneficiary is entitled to coverage under Medicare.
- The beneficiary fails to pay required premiums charged by the city. (The city should probably allow for a 30 day grace period.)

- The city terminates group health care coverage for all employees.

The U.S. Department of Health and Human Services is responsible for developing the regulations which apply to state and local governments under Title X. However, those regulations must be consistent with regulations issued by the U. S. Departments of Labor and Treasury on the same subject for other employers covered by Title X. With that many federal agencies involved, it will probably be awhile before those regulations are finally developed and published. When they are, MTAS will make you aware of them.

MODEL STATEMENT --- CONTINUATION COVERAGE

\*VERY IMPORTANT NOTICE\*

On April 7, 1986, a new Federal law was enacted [Public Law 99-272, Title X] requiring 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 carefully.]

If you are an employee of [employer's name] covered by [Group Health Plan Name] you have a right to choose this continuation coverage if you lose your group 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; or
- (4) Your spouse becomes eligible for Medicare.

In the case of a dependent child of an employee covered by [Name of Group Health Plan], he or she has the right to continuation coverage if group health coverage under [Name of Group Health Plan] 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 with [Name of Employer];
- (3) Parents' divorce or legal separation;
- (4) A parent becomes eligible for Medicare; or
- (5) The dependent ceases to be a "dependent child" under [Name of Group Health Plan].

Under the new law, the employee or a family member has the responsibility to inform [Name of the Plan Administrator] of a divorce, legal separation, or a child losing dependent status under [Name of Group Health Plan]. [Name of Employer] has the responsibility to notify [Name of Plan Administrator] of the employee's death, termination of employment or reduction in hours, or Medicare eligibility.

When [Name of Plan Administrator] is notified that one of these events has happened, [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 coverage will end.

If you choose continuation coverage, [Name of Employer] 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 3 years unless you lost group health coverage because of a termination of employment or reduction in hours. In that case, the required continuation coverage period is 18 months. However, the new law also provides that your continuation coverage may be cut short for any of the following five reasons:

- (1) [Name of Employer] 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 the new law, you may have to pay all or part of the premium for your continuation coverage. [The new law also says that, at the end of the 18 month or 3 year continuation coverage period, you must be allowed to enroll in an individual conversion health plan provided under [Name of Group Health Plan].]

This new law applies to [Name of Group Health Plan] beginning on [applicable date under §10002(d) of Cobra]. If you have any questions about the new law, 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] at the above address.

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