



NORTH RISK PARTNERS™

MN Benefits Continuation Laws for Public Entities

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NEW! Benefits Continuation Guidance Questionnaire



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Benefits Continuation Guidance Questionnaire
for Public Entity Groups

Welcome to the North Risk Partners *Benefits Continuation Coverage Guidance Form for Public Entity Groups*.

Once you click "Begin," you will start the questionnaire. Submitting this questionnaire will provide us with the information we need to resolve your issue.

Questionnaire submissions are sent directly to our HR and legal value-added service partners at Synergy Human Resources. A team member from Synergy will respond to your question within 48 hours and based on urgency. Response time for submissions received on weekends may be longer than 48 hours.



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TOPICS INCLUDE:

- State Continuation Laws
- The Relationship Between COBRA and State Continuation Laws
- Qualifying Events
- What is a Loss of Coverage?
- Events that are Not Qualifying Events
- Qualified Beneficiary
- Duration of Continuation of Coverage
- Same Rights and Benefits as Similarly Situated Beneficiaries
- Terminating Events
- Premium Determination
- Stacking of Events – the Second Qualifying Event

(Topics continued on next slide)



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TOPICS INCLUDE (continued):

- Total Disability
- Minnesota Law and Total Disability
- Minnesota Statutes section 471.61 subdivision 2b – Retiree Continuation
- Frequently Asked Questions Regarding Minnesota Statutes section 471.61
- Divorced Spouses and Minnesota Law
- Medicare and COBRA
- Medicare and Minnesota Law
- Some of the Most Commonly Asked COBRA Questions

Introduction

There are two main bodies of law that regulate continuation coverage for group health plans in Minnesota: (1) federal COBRA requirements of ERISA, the Internal Revenue Code, and the federal Public Health Service Act (PHSA); and (2) state continuation laws. For the most part, the federal laws contain the same requirements for continuation but apply to different types of health plans. For simplification purposes from this point on, we will only refer to COBRA and state continuation laws. Minnesota continuation laws contain some of the same provisions as federal law but are silent regarding such things as notice requirements and payment obligations, and have different coverage extension periods.



Introduction

In addition, former employees of a political subdivision who have met certain age and service requirements may continue their coverage indefinitely. As a result, it is critical to understand which of these laws apply to the group (or individual) you are working with in order to ensure compliance with the appropriate continuation requirements.



Introduction

In general, fully insured group health plans are subject to both state and federal continuation laws. Self-insured plans subject to ERISA must follow only federal requirements, although they could choose to follow Minnesota State law where the state law is more generous than federal COBRA. In Minnesota, political subdivision groups (cities, counties, schools, etc.) that self-insure their health plans must comply with federal and state continuation laws.



COBRA

COBRA stands for the Consolidated Omnibus Budget Reconciliation Act of 1985, P.L.99-272. COBRA is the federal continuation of coverage law. The ERISA provisions apply to all group health plans (fully insured and self-insured) maintained by employers with 2 or more employees, excluding governmental plans and certain church plans. The PHSA provisions apply to states and political subdivisions.



COBRA

COBRA requires employers to offer all employees and their covered dependents the opportunity to continue to receive health care coverage upon the occurrence of certain triggering events that result in the termination of their group health care coverage. The offered coverage must be the same as coverage they were receiving before the qualifying event. The coverage may be continued for up to 18, 24, 29 or 36 months, depending on the qualifying event.



State Continuation Laws

Minnesota continuation laws do not apply to self-funded plans that are subject to ERISA. Fully insured health plans that are underwritten by commercial carriers, HMOs and Blue Cross Blue Shield of Minnesota are subject to Minnesota continuation laws. In addition, Multiple Employer Welfare Arrangements (MEWAs); plans of political subdivisions, such as counties, school districts and municipalities, regardless of whether they are self-insured or fully insured; and fully insured church plans are subject to Minnesota continuation laws.



State Continuation Laws

Minnesota continuation laws are similar to many of the federal COBRA provisions. However, they apply to all group health plans that are subject to state regulation, regardless of the number of employees in the group. In some instances, Minnesota continuation laws contain more liberal provisions than COBRA. In other instances, Minnesota laws are not as specific as COBRA. Unfortunately, there have not been regulations issued on the state level to provide guidance to employers for administering continuation. As a result, in order to make appropriate continuation determinations, a plan administrator may need to look to the COBRA regulations or related case law for additional guidance.



The Relationship Between COBRA and State Continuation Laws

As mentioned above, certain health plans are subject to federal COBRA requirements and state continuation laws. Inconsistencies between these two bodies of law add complexity to COBRA administration. Plan administrators need to be aware of the requirements of both sets of laws to help them make the proper administrative decisions regarding continuation of coverage.

As a rule of thumb, when there is an inconsistency between what COBRA requires and what state continuation laws require, the plan administrator should always apply the more liberal or generous provision to the qualified beneficiary.



Qualifying Events

The obligation to offer continuation of coverage is triggered by the occurrence of qualifying events. A qualifying event is the occurrence of a triggering event that results in a loss of coverage. When an individual loses coverage under a health plan, the reason must fall into one of the following categories to ensure eligibility to continue coverage. Both state continuation and federal COBRA laws contain the same triggering events:



Qualifying Events

- Voluntary or involuntary termination of the covered employee's employment (other than by reason of gross misconduct), or reduction of hours of the covered employee's employment, including call to active military duty
- Death of the covered employee
- Divorce or legal separation of the covered employee from the employee's spouse
- Covered employee becomes entitled (enrolled in) benefits under Medicare
- Dependent child ceasing to be a dependent child under the generally applicable requirements of the plan
- Covered retirees in Chapter 11 bankruptcy reorganization



Qualifying Events

The triggering event plus a loss of coverage equals a COBRA/continuation qualifying event. If the triggering event occurs but there is no loss of plan coverage, there is no qualifying event. Conversely, if the loss of plan coverage happens for a reason other than the six bulleted items listed above, there is no qualifying event and no obligation to offer COBRA/continuation.



What is a Loss of Coverage?

A loss of coverage means that the participant ceases to be covered under the same terms and conditions that were in effect immediately before the qualifying event. The typical scenario is that the individual experiences a total loss in coverage when they terminate employment. Loss, however, could mean something other than a total loss of coverage. A loss could result from:

- any change in the terms or conditions of the coverage;
- an increase in required premiums;
- a reduction in benefits; and
- a requirement of any action to retain coverage.



Events that are Not Qualifying Events

It is important to keep in mind that not every loss of coverage under a health plan is considered a qualifying event. For instance, when an employee decides to drop coverage for a dependent who is still eligible under the health plan, the employer is not required to offer continuation to that dependent because this loss of coverage is not a qualifying event.



Qualified Beneficiary

A qualified beneficiary is someone who was covered under the plan immediately prior to the qualifying event and is a covered employee or the spouse or dependent child of a covered employee. In addition, a child born to or placed for adoption with the covered employee during the period of continuation of coverage is also a qualified beneficiary.

Even if the individual was covered under the plan for only one day prior to the qualifying event, he or she is still considered a qualified beneficiary.



Qualified Beneficiary

A non-qualified beneficiary is someone who was not on the plan the day before the qualifying event but was added to coverage at a later date. However, a non-qualified beneficiary does not have independent election rights. Their continuation rights are tied to those of the qualified beneficiary. Thus, a non-qualified beneficiary does not have second qualifying event election rights.



Qualified Beneficiary

Each qualified beneficiary has a right to a separate election under COBRA. If the qualifying event is termination of employment, all qualified beneficiaries have the right to continue coverage for up to 18 months. If the former employee decides to waive the right to elect continuation, the remaining qualified beneficiaries still have the right to elect continuation on their own.



Duration of Continuation of Coverage

Both COBRA and state continuation laws provide a maximum period of coverage for each type of qualifying event, and further provide that upon certain events, coverage may be terminated before the end of the maximum period. State continuation laws may provide for longer continuation periods than COBRA. The table (see attachment or handout) outlines the appropriate timeframes for each qualifying event under COBRA and state continuation laws.



Same Rights and Benefits as Similarly Situated Beneficiaries

Qualified beneficiaries must be provided with the same rights and benefits as similarly situated beneficiaries for whom no qualified event has occurred. In other words, employers should treat qualified beneficiaries on continuation of coverage the same way they treat active employees and their dependents. The coverage offered to qualified beneficiaries should be the same coverage offered to active employees. If the coverage changes for active employees, then the coverage changes for individuals on COBRA as well.



Terminating Events

Terminating events are circumstances in which the required continuation coverage may terminate before the maximum continuation period has been exhausted. Terminating events include:

1. The payment of premiums required under the plan are not made in a timely manner
2. The qualified beneficiary becomes covered under any other group plan that does not contain a pre-existing condition exclusion clause.
3. The employer ceases to provide any group health coverage to its employees.
4. The qualified beneficiary becomes entitled to Medicare (COBRA only).

A plan administrator who terminates COBRA coverage prior to the end of the maximum coverage period must provide a written notice of termination to each affected qualified beneficiary as soon as reasonably practicable.



Premium Determination

A qualified beneficiary who wishes to continue coverage must pay for it. The employer may contribute to the cost of continued coverage but is not required to. It does not matter who pays the premium as long as it is paid in a timely manner. In some cases, a new employer or public agency may pay the COBRA premium in an effort to reduce expenses.



Premium Determination

Premiums charged to a qualified beneficiary may not exceed 102 percent of the plan's cost for other similarly situated active individuals covered under the plan. However, under COBRA a totally disabled individual who extends the continuation period beyond the 18 months to 29 months may be charged up to 150 percent of the applicable contract charge for months 19 to 29. Minnesota law permits a Plan Administrator to charge the disabled employee only 100% of the premium paid by active employees. No administration fee is permitted.



Stacking of Events – the Second Qualifying Event

An important concept that impacts the length of continuation is commonly referred to as the "stacking of events." Stacking provides an individual who is already on continuation the opportunity to extend the coverage period beyond 18 months if a subsequent qualifying event occurs during his or her continuation period. Stacking is allowed only when the first qualifying event is the termination of employment. Under COBRA, the maximum continuation period is capped at 36 months. Under the state continuation law, the second qualifying event could result in indefinite coverage for the dependent in cases of divorce or the death of the former employee.



Total Disability

Under COBRA, if an employee or covered dependent is determined to be totally disabled by the Social Security Administration or becomes totally disabled within 60 days after the employee's termination of employment, all qualified beneficiaries are eligible for up to 29 months of continuation of coverage. The employer may charge up to 150 percent of the applicable premium for the 19th through 29th month of continuation. Certain conditions, however, must be met in order to qualify for the additional time under the plan.



Total Disability

These conditions are:

1. The first event must have been the termination of employment or a reduction in hours.
2. The qualified beneficiary must have been determined by the Social Security Administration to be totally disabled at the time of the first qualifying event or within the first 60 days of the COBRA coverage.
3. The qualified beneficiary must notify the plan administrator of the disability determination within 60 days after the latest of (1) the date of the Social Security disability determination; (2) the date on which the qualifying event occurs; (3) the date on which the qualified beneficiary loses coverage; or (4) the date on which the qualified beneficiary is informed of the obligation to provide the disability notice.
4. Notice must be provided before the end of the first 18 months of continuation coverage.



Total Disability

The DOL clarified in the 2004 regulations that an individual who previously received a disability determination and has not received a subsequent determination that he or she is no longer disabled would have at least 60 days after the occurrence of a qualifying event to provide the plan with a disability notice in order to be entitled to the disability extension.



Minnesota Law and Total Disability

Minnesota law pertaining to continuation rights for employees considered to be totally disabled are notably different than COBRA. In particular, Minnesota's disability continuation law applies when a "covered employee" becomes totally disabled. The disabled employee's dependents may also continue coverage. The law specifically defines total disability to mean "the inability of an injured or ill employee to engage in or perform the duties of the employee's regular occupation or employment" for the first two years. After the first two years of disability, the employee must be unable to engage in any paid employment or work for which the employee may by education or training, including rehabilitative training, become qualified.



Minnesota Law and Total Disability

In addition, under state law, a disabled employee is not limited to 29 months of continuation. A disabled individual who meets the above criteria is eligible to remain on continuation 24 months or indefinitely. Even when the disabled employee enrolls in Medicare, he or she would still be eligible to remain on continuation.



Minnesota Law and Total Disability

Under state law, a Social Security Administration disability determination is not required, but may be relied on. The employer can also rely on a physician's certification that the former employee is in fact totally disabled under the criteria established by state law. Employers may wish to periodically request updates from the former employee's physician on his or her disability status. A totally disabled employee may be required to pay part or all of the cost of coverage, but the employer may not charge an administrative fee.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Political subdivisions such as counties, municipal corporations, towns, school districts, etc., may provide group insurance to their officers, employees, retired officers and employees.

Political subdivisions that provide group health and dental insurance to their employees must provide former employees who meet certain criteria, and their dependents, the opportunity to continue their coverage indefinitely. Minnesota Statutes section 471.61 does not apply to group life insurance. The former employee must pay the equivalent of what it costs the group to maintain this coverage.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Who is Eligible?

The law defines those eligible for this benefit as former employees who are receiving a disability benefit or an annuity from a Minnesota public pension plan other than a volunteer firefighter plan, or those who have met the age and service requirements necessary to receive an annuity from such a plan.

Eligible individuals must remain in the same pool as active employees up to age 65 for purposes of rating and benefits. The employer may establish different benefits and rates for retirees age 65 and over.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Conflicts with State and Federal Law

Some of the provisions in Minnesota Statutes section 471.61 are not consistent with federal or other state continuation statutes. In situations where section 471.61 may be less favorable than state or federal law, the more liberal provision will apply. Section 471.61 does not limit the rights granted to former employees under other state or federal law, or under collective bargaining agreements or personnel plans.

For example, Minnesota Statutes section 471.61 provides that dependent coverage is not permitted after the death of the employee. However, under state continuation laws, a surviving spouse is eligible to continue coverage indefinitely.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Minnesota Statutes section 471.61 provides that former employees may not drop their own coverage and retain dependent coverage. Under state and federal law, each dependent covered under the coverage prior to a qualifying event would have a right to a separate election regardless of the former employee's decision to continue. If the former employee opted not to continue his or her own coverage, his dependents could elect at least 18 months of continuation from the termination of employment.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Notice to Employees

The Political Subdivision employer is required to notify an employee of available options prior to his or her retirement date. This is different from state and federal requirements that do not require notice until after the qualifying event.

Upon the employee's termination of employment, the employee has 60 days in which to elect this coverage and 45 days from his election to bring his or her account up to date.



**Minnesota Statutes section 471.61
subdivision 2b – Retiree Continuation**

Who Must Comply?

This law applies to fully insured and self-insured political subdivisions. The law defines these entities as, counties, municipal corporations, towns, school districts, county extension committees, other political subdivisions or body corporate or politic of Minnesota, other than the state or any department of the state.

The law does not apply to former employees terminated prior to August 1, 1992, who have not maintained continuous coverage with the group.



Minnesota Statutes section 471.61

Frequently Asked Questions Regarding Minnesota Statutes section 471.61 (see attachment or handout)



Divorced Spouses and Minnesota Law

Minnesota law requires that divorced spouses may continue coverage under a group or individual fully insured plan. The law requires that the cost to the divorced spouse may not exceed 102% of the cost to other similarly situated covered spouses who are not divorced.



Divorced Spouses and Minnesota Law

The Department of Commerce (DOC) has advised that a divorced spouse under a single/family-rated contract who elects to continue coverage may not be charged a premium that is greater than what is being charged for family coverage. When a divorced spouse elects continuation, Blue Cross and Blue Shield of Minnesota does not charge an additional premium to cover the former spouse if the employee is required to pay a family premium in order to cover dependent children. This is in keeping with a ruling from DOC in 1988 that to charge a divorced spouse an additional premium would amount to unjust enrichment.



Divorced Spouses and Minnesota Law

In addition, DOC has advised that under a single/family contract, when either of the divorced spouses remarries and adds their new spouse to the coverage, no additional premium may be charged to cover the new spouse. Blue Cross does not charge groups an additional premium for former spouses on family coverage when the group has a single/family rating structure and either spouse remarries.



Divorced Spouses and Minnesota Law

A former spouse covered under a family rate may elect a different health plan when two or more plan options are available, but only at open enrollment or a special enrollment event. If a divorced spouse elects a different plan than the rest of the family, they are charged the appropriate rate for that plan.



Medicare and COBRA

How Medicare entitlement will affect an individual's COBRA rights is a complicated subject and will depend on many variables.



Medicare and COBRA

Covered Employee's Medicare Entitlement as the First Qualifying Event

Medicare entitlement is listed as a triggering event under the state requirements and COBRA. However, under the Medicare Secondary payer rules, plans are generally not permitted to terminate the coverage of an employee because they are entitled to Medicare. Because Medicare entitlement will rarely cause a loss of coverage, it will rarely be a COBRA qualifying event.
Remember: Trigger Event + Loss of Coverage as a Result of Event = Qualifying Event.



Medicare and COBRA

Covered Employee's Medicare Entitlement as the Second Qualifying Event

Under COBRA, certain events can extend the 18-month coverage period to 36 months if the first event is termination of employment. However, the same logic that applies to the first qualifying event applies to a second qualifying event. Since Medicare entitlement would rarely have caused a loss of coverage had the employee still been working, it will rarely, if ever, cause an extension of benefits to 36 months under federal COBRA.



Medicare and COBRA

Covered Employee's Medicare Entitlement Before the Qualifying Event of Termination of Employment or Reduction in Hours

When an employee terminates employment within 18 months after they become eligible for Medicare, the employee's spouse and dependent children become entitled to a maximum of 36 months of coverage from the date of Medicare entitlement. The employee, however, is still only eligible for 18 months of coverage from the date of loss of coverage due to terminating employment.



Medicare and COBRA

Termination of COBRA Due to Medicare Entitlement

When the qualified beneficiary becomes entitled to Medicare *after* they elect COBRA, his or her COBRA coverage may be terminated under federal law. However, if the group is fully insured and subject to Minnesota state continuation laws, the former employee may not have continuation coverage through the group cancelled. The reason is that the Departments of Commerce and Health do not consider Medicare to qualify as other coverage.



Medicare and Minnesota Law

Under Minnesota Statutes section 62A.20, a spouse and dependent children can elect to continue coverage for up to 36 months when a covered employee or contractholder becomes enrolled in Medicare. The Minnesota Department of Commerce has ruled that this provision applies when a spouse or dependent loses coverage as a result of an employee or contractholder dropping group or individual coverage in favor of a Medicare supplement plan. The 36-month period begins to run from the time of election.



COBRA Questions

Some of the Most Commonly Asked COBRA Questions (see attachment or handout)



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