

# Fact Sheet on Continuation and Conversion Rights in Health Insurance Policies

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

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Both state and federal law give certain individuals who would otherwise lose their group health care coverage under an employer or association plan, the right to continue their coverage for a period of time. The two laws are similar in some ways, but also have provisions that are very different. Most employers that have 20 or more employees must comply with the federal law, while most group health insurance policies that provide coverage to Wisconsin residents must comply with the state law. When both laws apply to the group coverage, it is the opinion of the Office of the Commissioner of Insurance that where the federal and state laws differ, the law most favorable to the insured should apply. The state law also gives conversion rights to certain individuals who are covered under individual health insurance policies.

## Federal Law (COBRA)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that allows most employees, spouses, and their dependents who lose their health coverage under an employer's group health plan to continue coverage, at their own expense, for a period of time. This law applies to insured health plans and self-funded employer-sponsored plans in the private sector and those plans sponsored by state and local governments. However, COBRA does not apply to certain church plans, plans covering less than 20 employees, and plans covering federal employees.

Under the federal law, employees who terminate employment for any reason other than gross misconduct, or who lose their eligibility for group coverage because of a reduction in work hours, and the covered spouses and dependents of the employees may continue the group coverage for up to 18 months. A spouse and dependents may continue coverage for up to 36 months if they lose coverage due to the death of the employee, divorce from the employee, loss of dependent status due to age, or due to the employee's eligibility for Medicare. If within the first 60 days of COBRA

coverage an individual or dependent is determined by Social Security to be disabled, the disabled individual and other covered family members may continue coverage for up to 29 months. Information regarding who to contact about the federal COBRA law is available at the end of this fact sheet.

## Wisconsin Law (s. 632.897, Wis. Stat.)

Wisconsin's continuation law applies to most group health insurance policies that provide hospital or medical coverage to Wisconsin residents. The law applies to group policies issued to employers of any size. The law does not apply to employer self-funded health plans, or policies that cover only specified diseases or accidental injuries.

## Commonly Asked Questions About Wisconsin's Continuation and Conversion Law

### Who has continuation and conversion rights?

The state law gives the following individuals who have been continuously covered under a group health insurance policy for at least three months the right to continue the group coverage, or to convert to an individual policy providing similar benefits:

- A former spouse whose coverage ends because of divorce or annulment.
- An employee who voluntarily or involuntarily loses eligibility for coverage other than discharge for misconduct, along with the employee's spouse and dependents, if covered.
- A covered spouse and/or dependents of an employee who has died.

### What is meant by "discharge for misconduct?"

"Discharge for misconduct" is not defined by the law. The courts have decided cases involving the question of misconduct in connection with unemployment compensation cases and might use

the same parameters when determining your eligibility for continuation/conversion. However, this is up to the courts to decide. The Office of the Commissioner of Insurance does not have authority to decide such questions.

**How long may I continue group coverage after eligibility would otherwise end?**

You may continue group coverage until:

- You establish residence outside Wisconsin (If your group coverage terminates because of this situation, you will be eligible to convert to an individual policy.);
- You do not pay your premiums;
- You become eligible for similar coverage under another group policy;
- Your former spouse loses eligibility for group coverage, if you are continuing coverage as the divorced spouse of that person. (If your group coverage terminates because of this situation, you will be eligible to convert to an individual policy.)

Even if none of the above situations occur, the insurance company may require you to convert to an individual health insurance policy providing similar benefits after you have continued group coverage for 18 months.

**May I continue coverage under my former employer's insurance plan even if I go to work for a different employer?**

Yes, but only if your new employer's coverage is not similar to your former employer's coverage. Coverage is not "similar" if you are subject to any preexisting condition waiting period, or if the new employer's coverage provides substantially different benefits, or is more costly. You must also still meet the other requirements listed above in order to continue coverage.

**In the event of a divorce or annulment, what rights are provided for the spouse who loses eligibility for group coverage?**

If you are an insured spouse under a group policy and your marriage ends due to divorce or annulment, you may choose between converting to an individual policy or continuing group coverage. COBRA requires that you or your former spouse

inform the employer of the divorce not more than 60 days after it becomes final. If you do not do so, you may lose your right to continue under the group insurance plan.

**Do I have continuation or conversion rights if I become eligible for Medicare?**

State law allows you the right to continue group coverage or convert to an individual policy when you become eligible for Medicare. However, the coverage need not duplicate benefits paid by Medicare. An insurance company is also not required to offer or keep in force a conversion policy if Medicare benefits and the conversion policy benefits result in overinsurance and the insurance company has filed its overinsurance standards with the Commissioner.

**Do I have continuation or conversion rights if my work hours are reduced or I am on strike?**

Yes, if you lose eligibility for coverage under the group policy because of a reduction in your work hours or a strike, you are eligible for continuation or conversion. However, if your group policy is cancelled (which could happen during a strike), your right to continuation is no longer available because the group insurance policy no longer exists. You would still have conversion rights.

**What type of individual conversion policy must an insurance company offer me?**

An insurance company must offer at least:

- Coverage similar to that offered under the previous policy, or
- A high-limit comprehensive policy, or
- A choice among three different plans, including basic coverage and two major medical expense policies.

**Can I be covered under another policy and still convert to an individual conversion policy?**

No. Individual conversion coverage does not have to be offered if the benefits provided or available to you under another individual or group policy providing similar benefits, or through coverage that you are eligible for under state or federal law, together with the converted policy's benefits, would result in overinsurance as determined by the insurer.

### **How much must I pay for continuation or conversion coverage?**

Under state law, if you continue your group coverage, you cannot be charged more than the group rate, which is the amount you paid toward your group insurance coverage, plus any amount paid by the employer for your coverage. The insurance company issuing the policy determines the cost of conversion policies. The cost is normally much higher than the cost of group coverage.

### **What is the temporary benefit under the American Recovery and Reinvestment Act of 2009?**

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65% reduction in COBRA premiums for up to nine months for certain assistance eligible individuals who are eligible for continuation coverage due to the employee's involuntary termination of employment during the period beginning September 1, 2008, and ending December 31, 2009. The premium reduction is also available to certain assistance eligible individuals under Wisconsin's continuation law. Individuals who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. If, under the ARRA, you receive a COBRA health insurance continuation premium reduction through your employer, you are not eligible to receive the Health Coverage Tax Credit (HCTC) during the same month. Information regarding who to contact about the ARRA is available at the end of this fact sheet.

### **What is the Health Coverage Tax Credit?**

The federal Trade Act of 2002 created the HCTC that pays 65% of the premiums for qualified health plans for eligible individuals and their family members who have lost their jobs because of trade with foreign countries. The HCTC can help pay for:

- COBRA coverage if the eligible person pays more than 50% of the cost of coverage, or
- A spouse's employer-sponsored group health coverage, if the spouse pays more than 50% of the cost of the coverage, or
- Coverage for an individual health plan started at least 30 days before the person left the job that made him or her eligible for Trade Adjustment Assistance (TAA), or
- Coverage through a state-qualified health plan.

In Wisconsin, the BadgerCare Plus Benchmark Plan is the state-qualified health plan. Individuals who are eligible for the HCTC may choose to have the amount of the credit paid on a monthly basis to their health coverage provider as it becomes due or may claim the tax credit on their income tax returns after the end of the year. The HCTC is administered by the Internal Revenue Service. Information regarding who to contact about the HCTC and BadgerCare Plus is available at the end of this fact sheet.

### **What are the temporary changes to the HCTC?**

As part of the ARRA, the federal Trade Adjustment Assistance Health Coverage Improvement Act temporarily amends the HCTC. Beginning in April 2009, the HCTC tax credit has increased from 65% to 80% of qualified health insurance premiums. Also, individuals receiving the HCTC for COBRA continuation coverage may be eligible to have their COBRA benefits extended for as long as they have TAA eligibility. Also, beginning in January 2010, qualified family members may continue receiving the HCTC for up to 24 months after the primary eligible individual is no longer receiving the credit due to certain life events, including enrollment in Medicare, divorce, or death. The new law, including the changes to the HCTC, expires on December 31, 2010. Therefore, the changes to the HCTC, including the new timeframes for extended benefits, are only valid for the remainder of 2009 and 2010.

### **Who is responsible for notifying me of my right to continuation or conversion coverage?**

The employer is required to provide you written notice of your right to continue group coverage or convert to an individual policy and the premiums required for each, including the manner, place, and time in which the payments must be made, within 5 days of your loss of group coverage.

### **How long do I have to make a decision about continuing group coverage or converting to an individual policy?**

You have 30 days from the date you are given notice of your continuation and conversion rights to make your decision and pay the required premium for coverage.

**What happens if I am not notified of my rights?**

If the required premiums continue to be paid, your group coverage will continue until you are given notice of your rights and you elect continued or conversion coverage. If you are not notified of your continuation and conversion rights and your coverage is terminated, you may have a basis for a civil action against the employer, your former spouse, or the insurance company. The state continuation law does not make another party responsible for a terminated insured's medical expenses.

**Are continuation or conversion rights available if a group policy terminates because an employer goes out of business?**

Normally, continuation rights are not available when an employer goes out of business because the employer's group health insurance policy is no longer effective. In such cases, employees are left only with the option to convert to an individual policy. If an employer, rather than purchasing a group policy directly, provides coverage to employees by participating in a group policy that is issued to a trust or an association, continuation and conversion rights are generally still available.

**How does my eligibility for family or medical leave through an employer relate to my continuation and conversion rights?**

Wisconsin law requires employers who employ 50 or more employees on a permanent basis to allow employees who meet certain criteria the right to take family or medical leave. If you take family or medical leave, your employer must maintain group health insurance coverage under the same condition that applied prior to the leave. However, you are required to make the same premium contributions that you would have made if not on leave. If you are unable to return to work at the end of the family or medical leave, you would then be eligible for continuation. Your 18 months of eligibility for continuation begins when your family or medical leave ends or when your health insurance coverage would otherwise terminate, not when your family or medical leave began.

**What happens if my employer changes insurance companies or changes my health insurance benefits while I am on continuation?**

If the employer changes insurance companies, you will be covered under the employer's new group insurance policy until the end of the 18-month continuation period as long as you remain eligible. If the employer changes policy benefits, you will receive the same benefits available to all active employees.

**Is the employer required to give me a certain amount of notice if a decision is made to change insurance companies or to change the benefits under the existing insurance plan?**

No. Wisconsin law does not require that the employer notify you within a certain time of changes to the group insurance plan.

**Am I entitled to a grace period for paying continuation premiums to the employer?**

No. You are required to pay the premiums to the employer by the date specified in the notice of your right to continue coverage.

**What happens at the end of my 18-month continuation period?**

The insurance company may require you to convert to an individual policy after you have been provided 18 months of continuation coverage. Your conversion rights and the type of individual conversion coverage that the insurer must offer you are discussed earlier in this factsheet. There is also another individual coverage option available to you under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). If you have lost your employer-offered group health insurance, had continuous insurance coverage for at least 18 months without a break in coverage of 63 days or more, and elected and exhausted any COBRA or state continuation coverage offered you, you may be eligible for Wisconsin's Health Insurance Risk-Sharing Plan (HIRSP) without being subject to HIRSP's six-month waiting period for coverage of preexisting conditions. You must be a Wisconsin resident, under age 65, and not eligible for employer-offered group health insurance, Medicare, Medicaid, or BadgerCare Plus and have applied for HIRSP within 63 days of losing your employer-offered group health

insurance, including any continuation coverage, if offered. Information regarding who to contact about HIRSP is available at the end of this fact sheet.

**If my continuation coverage terminates before I have a chance to apply for the HIRSP plan, can I still apply for the plan?**

Yes. If not more than 63 days have passed since the termination of your group continuation coverage, you are still eligible for HIRSP with no preexisting condition limitations.

**What conversion rights do I have if I am covered under an individual health insurance policy?**

If a husband and wife are covered under an individual health insurance policy and the marriage ends in divorce or annulment, the person who was covered as a dependent spouse has the right to convert to an individual policy. The insurance company is responsible for giving notice of the right to convert to the spouse whose coverage is terminated.

**I am insured as the spouse on my husband's health insurance policy and we just became legally separated. Will I lose my insurance coverage?**

No group or individual policy which provides coverage to the spouse of the group member or insured may contain a provision that terminates coverage of the spouse, solely as a result of a break in the marital relationship except by reason of divorce or annulment of the marriage. However, the group member or policyholder may choose to change from family to individual coverage.

**Where to Go for Help**

For questions about the Wisconsin continuation law, contact:

Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 266-0103 (Madison)  
1-800-236-8517 (Statewide)  
[oci.wi.gov](http://oci.wi.gov)

For information regarding Wisconsin's Health Insurance Risk-Sharing Plan (HIRSP), contact:

HIRSP Customer Service  
1751 West Broadway  
P.O. Box 8961  
Madison, WI 53708-8961  
(608) 221-4551 (Madison)  
1-800-828-4777 (Statewide)  
Fax: (608) 226-8770  
[www.hirsp.org](http://www.hirsp.org)

For questions about the federal COBRA law or the premium reduction provisions under the ARRA, contact:

U.S. Department of Labor – Regional Office  
Employee Benefits Security Administration  
(EBSA)  
200 West Adams, Suite 1600  
Chicago, IL 60606  
(312) 353-0900 or toll-free 1-866-444-3272  
or visit the following Web sites at [www.dol.gov/ebsa/COBRA.html](http://www.dol.gov/ebsa/COBRA.html) or [www.cms.hhs.gov/COBRAContinuationofCov](http://www.cms.hhs.gov/COBRAContinuationofCov)

For questions about eligibility for the TAA tax credit for qualified health insurance coverage, call the HCTC Customer Contact Center at 1-866-628-HCTC (4282). You may also visit the HCTC Web site at [www.irs.gov](http://www.irs.gov) and enter the keyword "HCTC."

For questions about the BadgerCare Plus Benchmark Plan, contact the Wisconsin Department of Health Services by calling the HCTC Call Center: 1-608-266-6740 or go to the department's Web site at: [www.dhs.wisconsin.gov/em/hctc/pdf/p-10181.pdf](http://www.dhs.wisconsin.gov/em/hctc/pdf/p-10181.pdf).

For information on filing a complaint with the Insurance Commissioner's Office, call:

(608) 266-0103 (Madison)  
1-800-236-8517 (Statewide)  
Deaf, hearing, or speech-impaired callers may reach OCI through WI TRS.  
For your convenience, a complaint form is included in OCI's Web site, [oci.wi.gov](http://oci.wi.gov).