

Fact Sheet on Continuation Rights in Health Insurance Policies

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

PI-023 (R 04/2018)

Both state and federal law give certain individuals, who would otherwise lose their group health insurance 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 very different.

- Most employers with 20 or more employees must comply with federal law.
- Most group health insurance policies providing coverage to Wisconsin residents must comply with state law.

When both laws apply to group coverage, it is the opinion of the Office of the Commissioner of Insurance (OCI) where the federal and state laws differ, the law most favorable to the insured should apply.

Federal Law (COBRA)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law allowing 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. COBRA applies to insured health plans and self-funded employer-sponsored plans in the private sector and those plans sponsored by state and local governments.

- Under federal law, employees who have a reduction in work hours or terminate employment for any reason other than gross misconduct may continue their group coverage for up to 18 months. (A spouse and dependents are also covered.)
- 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 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.
- COBRA does not apply to certain church plans, plans covering fewer than 20 employees, and plans covering federal employees.

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

Wisconsin's continuation law applies to most group health insurance policies providing hospital or medical coverage. Dental, vision, and prescription drug benefits are not required to be provided if offered as separate policies. The law applies to group policies issued to employers of any size. Additionally, employees who live outside of the state of Wisconsin during employment with an employer located within the state of Wisconsin would be eligible for continuation coverage. The law does not apply to employer self-funded health plans or policies covering only specified diseases or accidental injuries.

Commonly Asked Questions Concerning Continuation Rights

Who has continuation rights?

Wisconsin statutes give the following individuals who have been continuously covered under a group health insurance policy for at least three months the right to continue group coverage:

- A former spouse whose coverage ends due to 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

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

You may continue group coverage until:

- You establish residence outside Wisconsin, or
- You do not pay your premiums, or
- You become eligible for similar coverage under another group policy, or
- Your former spouse loses eligibility for group coverage if you are continuing coverage as the divorced spouse.

What happens if I decide not to purchase continuation coverage?

If you decide not to continue coverage and pay the premium when initially offered group continuation, you may be eligible for a special enrollment period (SEP) during which you can enroll in an individual health insurance plan.

What is a special enrollment period?

A special enrollment period is a time outside of the annual open enrollment period for health insurance during which you and your family have a right to sign up for health coverage. Generally, a person may qualify for a special enrollment period of 60 days following the loss of health insurance coverage. If you do not qualify for a special enrollment period, you cannot buy health insurance until the next open enrollment period.

Am I eligible for a special enrollment period if I decide to drop my continuation coverage or stop paying premiums during the 18-month eligibility period?

No. You are not eligible for special enrollment if you voluntarily cancel your continuation coverage before your 18 months of eligibility has been exhausted and you are outside of the annual open enrollment period for health insurance. The annual open enrollment period for the 2018 plan year was November 1, 2017, to January 31, 2018. You will not be able to enroll in an individual health insurance plan until the next open enrollment period.

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

At the end of your 18-month continuation period you are eligible for a special enrollment period and may enroll in an individual health insurance plan.

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 enrolling in an individual policy or continuing group coverage. COBRA requires you or your former spouse to 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 rights if I become eligible for Medicare?

State law allows you the right to continue group coverage when you become eligible for Medicare. However, the coverage need not duplicate benefits payable by Medicare. When you retire, Medicare may be primary to your group coverage, so your group coverage will only cover the 20% not covered by Medicare. This may apply regardless of the fact you did not enroll in Medicare Part B.

Under state continuation, if my spouse who is the covered employee becomes eligible for Medicare and wishes to retire and use Medicare as the only insurance, do I have continuation rights?

Under state continuation, the spouse of the covered employee can only remain on the employee's plan if

the employee continues to be on the plan. One may wish to look at the insurability of the retiree's spouse before making the decision to end the plan. However, under COBRA, when the covered employee becomes entitled to Medicare, this is a qualifying event for the spouse, and the spouse is able to continue the plan.

Do I have continuation 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. 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 be eligible to enroll in an individual plan.

How much must I pay for continuation 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.

Who is responsible for notifying me of my right to continuation coverage?

The employer is required to provide you written notice of your right to continue group coverage and the premiums required, 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?

You have 30 days from the date you are given notice of your continuation 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 continuation coverage. If you are not notified of your continuation 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 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 may enroll in an individual policy. If an employer, rather than purchasing a group policy directly, provides coverage to employees by participating in a group policy issued to a trust or an association, continuation rights are generally still available.

How does my eligibility for family or medical leave through an employer relate to my continuation 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 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 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 premiums to the employer by the date specified in the notice of your right to continue coverage. If payment is not received by the due date, continuation coverage will be cancelled and there is no provision for reinstatement of a continuation policy.

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. A group or individual policy providing coverage to the spouse of the group member or insured may contain a provision terminating 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.

What is meant by "discharge for misconduct?"

"Discharge for misconduct" is not defined by 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 eligibility for state continuation coverage. However, this is up to the courts to decide. OCI does not have authority to decide such questions.

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

For questions about the federal COBRA law, contact:

U.S. Department of Labor – Regional Office
Employee Benefits Security Administration
(EBSA)
230 South Dearborn Street, Suite 2160
Chicago, IL 60604
(312) 353-0900 or toll-free 1-866-444-3272
or visit the following Web sites:
www.dol.gov/general/topic/health-plans/cobra
or
www.dol.gov/agencies/ebsa

For questions about special enrollment periods, contact:

Health Insurance Marketplace
1-800-318-2596
<https://www.healthcare.gov/>

If you have a specific complaint about your insurance, refer it first to the insurance company or agent involved. If you do not receive satisfactory answers, contact OCI.

To file a complaint online or to print a complaint form:

OCI's Web Site
oci.wi.gov

Phone
(608) 266-0103 (In Madison)
or
1-800-236-8517 (Statewide)

Mailing Address
Office of the Commissioner of Insurance
P.O. Box 7873
Madison, WI 53707-7873

E-Mail
ocicomplaints@wisconsin.gov
Please indicate your name and phone number.

Deaf, hearing, or speech impaired callers may reach OCI through WI TRS