

**Health Care**  
**Coverage When Leaving**  
**or Switching Jobs**

**Guide for Advocates**

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When a person decides to take a new job or leave an existing job, an important issue to consider is the impact of this change on existing health care and the ability to obtain health care from the new employer. State and federal laws provide some protections for persons who are leaving a job, whether or not they are leaving for a new job.

This brochure provides a general overview of the rules for moving from one employer-sponsored health care plan to another and the rules for moving from employer-sponsored health care coverage to individual health insurance. For more information regarding pre-existing condition exclusions and waiting periods, including obtaining health insurance when you are uninsured, please see the Pennsylvania Health Law Project's brochure on Pre-Existing Conditions, available on our Web site at [www.phlp.org](http://www.phlp.org).

The Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Health Insurance Portability and Accountability Act (HIPAA) provide some protections and benefits for individuals leaving employer-sponsored group health insurance. If you have been involuntarily terminated, you may be eligible for a nine-month COBRA subsidy. For more information please see the Pennsylvania Health Law Project's fact sheet, "Navigating COBRA after the Passage of the American Recovery and Reinvestment Act of 2009," available on our Web site.

### **Group Health Insurance**

Group health insurance is insurance purchased by an employer, union or professional association from an insurance company. The employer, union or professional association then offers its employees the opportunity to purchase their health plans. The health plans can vary from health maintenance organizations (HMOs) to fee-for-service plans covering a range of benefits with different eligibility requirements.

### **Leaving Employer-sponsored Group Health Insurance**

If you are leaving a job through which you have "group health insurance:"

- COBRA may give you the opportunity to continue that insurance by allowing you to purchase temporary extended health care benefits offered by your former employer while you are looking for a new job or during a waiting period imposed by a new employer. The American Reinvestment and Recovery Act of 2009 may provide for a reduction in the COBRA premium that may be charged to you.
- You may have rights under HIPAA that protect you and your dependents by limit-

ing the pre-existing condition exclusion period and guaranteeing you the right to have insurance available that you can purchase.

## **The Consolidated Omnibus Budget Reconciliation Act (COBRA)**

### **Eligibility for COBRA Protections**

COBRA is a federal law that gives employees who leave an employer's group health plan the opportunity to purchase and maintain coverage under the plan for a fixed period of time lasting between 18 and 36 months. COBRA can be used to maintain coverage and meet the eligibility requirements for protections under HIPAA:

- If you are between jobs, COBRA can help you avoid a "significant break in coverage."
- COBRA can help you maximize your "creditable coverage."
- COBRA can give you coverage through a new job's waiting period.

In order to receive the protections offered by COBRA, you must meet ALL of the following requirements:

- You must work for an employer with 20 or more employees. You must be covered under the employer's group health plan as an employee.
- You must have a "qualifying event" that would cause you to lose your health insurance.

**Note:** If you are looking for individual health insurance, you **must** first take and exhaust COBRA that is available to you in order to qualify as a HIPAA-eligible individual and receive the protections offered by HIPAA.

Qualifying events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine whether COBRA protections apply to you and the amount of time that a plan must offer you health coverage under COBRA. These events include:

- Death of the covered employee.
- Termination of the covered employee's employment for any reason other than gross misconduct.
- Reduction in the number of hours of employment.
- Divorce or legal separation of the covered employee.
- Covered employee's new entitlement to Medicare.

**If you are a qualified beneficiary, you will receive a COBRA election notice from either your employer or a plan administrator. You have 60 days to elect to enroll in COBRA coverage. The 60-day election period begins either on the day of your qualifying event or the day you received your COBRA election notice, whichever is later.**

### **Specific COBRA Protections**

If COBRA protections apply to you, your spouse and dependent children might be able to continue to be covered under your former employer's group health insurance policy for a fixed number of months. You would be able to purchase the insurance at cost, plus 2% for administrative expenses (which will be higher than the cost you paid for it while you were employed) and maintain the same benefit package you had until you choose to change coverage or find another employer with coverage.

COBRA coverage will be available for a certain period of time, based on the qualifying event that would have otherwise caused the employee to lose health insurance coverage through her job. COBRA coverage must be available for:

- Up to 18 months, if the qualifying event is termination of employment or a reduction of hours.
- Up to 29 months, if you become eligible for Social Security disability benefits during the first 60 days of COBRA
- Up to 36 months, if you were insured through your spouse's or parent's group coverage and the spouse or parent has died, divorced, or separated. COBRA also applies for up to 36 months for dependent children who lose coverage because they reach maximum age limits.

COBRA will not apply if the employer terminates the health insurance plan. Also, if an employer goes out of business and cancels the plan or fails to pay the premium, the coverage stops and COBRA will not apply. COBRA only applies when the group policy remains in force. Any changes to the group plan that apply to active employees in a similar situation to the COBRA beneficiaries will also apply to COBRA beneficiaries. COBRA will no longer apply if the employer chooses to completely terminate the group plan option at any point during your coverage. If your plan is terminated early, you will be provided with an early termination notice.

COBRA applies to all employers of 20 or more workers who offer insurance to their employees. This includes self-insured employers, but does not apply to employers who offer plans sponsored by the federal government or certain church-related organizations as defined by federal law.

## **Health Insurance Portability and Accountability Act (HIPAA)**

### **Eligibility for HIPAA Protections**

The Health Insurance Portability and Accountability Act of 1996, otherwise known as HIPAA, provides rights and protections under group health plans. HIPAA may also give you a right to purchase individual coverage if you have no group health coverage available and have exhausted COBRA or other continuation coverage.

In order to receive the protections from HIPAA, you must meet ALL of the following requirements:

- You must have at least 18 months of continuous creditable coverage, the last day of which must have been under an employer group health plan.
- You must apply for health insurance as a HIPAA-eligible individual no later than 63 days after losing your group coverage in order to avoid a “significant break in coverage.”
- You must have used up any COBRA or state continuation coverage for which you were eligible.
- You must not be currently eligible for coverage under Medicare, Medical Assistance or another group health plan.
- You must not currently have health insurance. If you know your group health coverage is about to end, you can apply for HIPAA ahead of time but it will not go into effect until your group coverage actually ends.
- You must not have lost your previous coverage due to non-payment or fraud.

### **HIPAA Protections Provided for “Eligible Individuals” Seeking Group Health Insurance**

If HIPAA protections apply to you, you will be considered an “eligible” individual able to enter new group health insurance or new individual health insurance plans with the following protections:

- Group health plans cannot apply a pre-existing condition exclusion period for pregnancy, newborns or newly adopted children.
- Group health plans that impose pre-existing condition exclusion periods must give you credit for any previous continuous “creditable coverage” that you have had.
  - Creditable coverage includes most health insurance coverage you have had in the past, whether under another group plan, an individual

health insurance policy, Medical Assistance, Medicare, or a guaranteed issue plan.

- Your pre-existing condition exclusion period is reduced by a day for each day of creditable coverage you have, unless there was a significant break in coverage. A significant break in coverage is a period of 63 days without creditable coverage.
- Previous group plans and previous insurers are required to give you a “certificate of coverage” to be used to prove your creditable coverage.
- Group health plans can only exclude coverage for pre-existing conditions for up to 12 months.
- Group health plans can count as pre-existing conditions only those conditions for which you have received a diagnosis, treatment, or medical advice within the six months before you joined the plan.
- You must be given a special opportunity to sign up for your group plan if certain changes happen to your family.
- A special enrollment period is available if a person with other health coverage loses that coverage, or if a person becomes a new dependent through marriage, birth or adoption.
- A request for this special enrollment must be made within 30 days of losing coverage or becoming a new dependent.
- If you are a HIPAA-eligible individual, you cannot be discriminated against or charged more because of your health status. Note that if you are enrolling in a group health plan and have a pre-existing condition for which you have been treated in the last six months, your pre-existing condition may still be excluded from coverage for up to one year.

### **HIPAA Protections Provided for “Eligible Individuals” Seeking Individual Health Insurance**

- Individual health plans are guaranteed for certain individuals with prior group coverage.
- Individual health plans operating in your region must offer you a choice of at least two state-approved guaranteed issue plans.
- The individual health plans cannot impose a pre-existing condition exclusion period.

Note: HIPAA eligibility ends when you enroll in individual coverage, because the last day of your continuous health coverage must have been in a group plan.

### **Renewal Rights**

Beyond the protections described above, HIPAA guarantees, in most cases, that both employers and individuals who buy insurance can renew the coverage regardless of the current health of those covered under the policy.

**For questions about ...**

**Individual and Group Health Insurance, contact:**

Pennsylvania Department of Insurance Automated Consumer Hotline

Phone: (877) 881-6388

Web site: <http://www.ins.state.pa.us/>

**COBRA Continuation Coverage and the COBRA Subsidy, contact:**

US Department of Labor, Employer Benefits Security

Administration Employee and Employer Assistance Hotline and Publication

Phone: (866) 444-3272

Web site: <http://www.dol.gov/ebsa/>

**Changes in Eligibility or Premiums, contact:**

Internal Revenue Service

Phone: (800) 829-1040

Web site: <http://www.irs.ustreas.gov>

For more information, call:  
**Pennsylvania Health Law Project**  
Helpline at (800) 274-3258

For more information about the Pennsylvania Health Law Project, visit:  
**[www.phlp.org](http://www.phlp.org)**