

A Spouse's Right to Health Insurance After Divorce: A Review

By Clare D. McGorrian

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Without proper planning and advice, losing health insurance is a real risk for a divorcing spouse who relies on the other spouse for coverage. Women in particular face this risk, as they are twice as likely as men to have coverage through their spouse's employer. Although state and federal laws provide protections, lack of understanding of these laws can result in failure to adequately protect health insurance for the dependent spouse.

This article reviews the legal rights of spouses in Massachusetts to remain on an ex-spouse's employer group health plan after divorce or legal separation. In addition, the article discusses alternatives for divorcing spouses who do not have access to a group plan.

Authority of the Probate and Family Court

Under Massachusetts law, Probate and Family Court judges presiding over an action for divorce or separate support must determine if the obligor spouse has employer-sponsored group health insurance that will cover the other spouse. If such group coverage is available, judges must generally order the insured spouse to extend coverage to the dependent spouse. The judge must consider the health insurance coverage of the parties:

- (a) Upon commencement of the action, and if there is an existing policy that covers the dependent spouse, shall enter an order requiring maintenance of the coverage during the pendency of the action; Supp. Prob. Court Rule 411;
- (b) Upon motions for temporary support orders; G.L. c. 208, § 17 (temporary order of alimony), G.L. c. 208 § 20 (order for spousal maintenance upon temporary separation); G.L. c. 209, § 32 (temporary order of separate support); and
- (c) Upon entering final judgment for divorce or separate support. G.L. c. 208, § 34 (alimony upon judgment of divorce); G.L. c. 209, § 32 (judgment of separate support).

Massachusetts laws on continued coverage

State insurance laws allow the dependent spouse to remain on the insured spouse's private employer-sponsored group plan after divorce and legal separation. *See* G.L. c. 175, § 110I (commercial health insurance carriers); G.L. c. 176A, § 8F and G.L. c. 176B, § 6B (Blue Cross/Blue Shield plans); G.L. c. 176G, § 5A (HMOs); G.L. c. 176I, § 9 (preferred provider

arrangements). State, county and municipal government employees in Massachusetts enjoy the same protections. G.L. c. 32A, § 11A; G.L. c. 32B, § 9H.

Pursuant to the above laws, if a member of a group plan is a party to a judgment absolute of divorce or separate support, the member's spouse "shall be and remain eligible" for coverage, "as if said judgment had not been entered." *See, e.g.*, G.L. c. 175, § 110I(a). Eligibility for coverage lasts as long as the insured spouse is a participant in a group plan, whether judgment was entered before the effective date of the plan. *Id.* The coverage ends when the dependent spouse remarries, but the judgment may provide for coverage to continue after the *insured* spouse remarries. *See, e.g.*, G.L. c. 175 § 110I(b). As long as the insured spouse has not remarried, the insurer may not charge an additional premium for the family coverage. G.L. c. 175 § 110I(a).

Impact of federal preemption by ERISA

Health insurance may lapse after a divorce despite language in the judgment that reflects the foregoing state laws. The reason often lies in the type of plan the insured spouse's employer offers. Employer-sponsored group health plans may be either *insured* or *self-insured*. With an insured health plan, the employer purchases coverage from an insurance carrier or managed care organization (such as an HMO) and bears no risk for claims. With a self-insured (or self-funded) plan, the employer bears financial risk for employee medical claims.

The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, regulates private employer group health plans. ERISA does not mandate benefits but requires employers to satisfy procedural requirements with regard to plan beneficiaries. For example, an ERISA-governed group health plan must designate fiduciaries and a plan administrator to manage the plan. 29 U.S.C. §§ 1102, 1104. Employers subject to ERISA must also provide beneficiaries with a summary plan description of their health benefits. 29 U.S.C. §§ 1021(a).

ERISA's preemption clause, 29 U.S.C. § 1144(b)(2)(B), exempts self-insured employer group health plans from state insurance laws, including the Massachusetts laws that extend health insurance eligibility to a divorced spouse. *See Bergin v. Wausau Ins. Co.*, 863 F. Supp. 34 (D. Mass. 1994); *Cellilli v. Cellilli*, 939 F. Supp. 72 (D. Mass. 1996). Even if the employer only bears limited risk (due to reinsurance or "stop-loss" protection), the plan is still considered self-insured for ERISA preemption purposes. *See, e.g., Cuttle v. Federal Employees Metal Trades Council*, 623 F. Supp. 1154, 1157 (D. Me. 1985).

Only insured plans are subject to the Massachusetts insurance laws that deem a divorced spouse eligible for the ex-spouse's group health plan. Therefore, a lawyer for the dependent spouse must determine whether the plan is self-insured. The summary plan description must disclose whether the plan is self-insured. 29 U.S.C. §§ 1021(a), 1022, 1024(b). In figuring out a plan's status, it is important to remember that many self-insured plans hire an insurer or HMO to administer plan benefits. Also, some employers offer both self-insured and insured options to employees.

Continuation rights under federal law

Although state insurance continuation laws do not apply to self-insured plans, a dependent spouse may qualify for continued coverage under federal law. Under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. § 1161 *et seq.*, private employers with 20 or more employees that offer health plans must offer continuation coverage to divorced and separated spouses of employees. (COBRA also applies, concurrently with state insurance laws, to *insured* group plans of these employers.)

Under COBRA, an employee's spouse who was covered on the day before the divorce is considered a "qualified beneficiary." 29 U.S.C. § 1161(a). Divorce and legal separation are deemed "qualifying events." 29 U.S.C. § 1163. The spouse, as a qualified beneficiary, may elect to continue coverage for up to 36 months. 29 U.S.C. § 1167(2), (3). Coverage will end earlier if: a) premiums are not paid; b) the beneficiary becomes eligible for Medicare; c) the beneficiary becomes eligible for other group coverage that covers all her pre-existing conditions; or d) the ex-spouse's employer ceases to offer health coverage to employees. *Id.*

The employee or spouse must notify the health plan administrator of the divorce within 60 days from the date of the final judgment. In the case of legal separation, the triggering date for the 60-day notice period varies, as employer plans may define "legally separated" differently.

COBRA premiums can be 102 percent of the amount charged to non-COBRA plan members. Timely payment of premiums is essential to maintaining coverage.

Governmental employers and church health plans are exempt from COBRA. 29 U.S.C. § 1003(b). However, many government workers have the right to continue health coverage under other laws. Spouses of Massachusetts government workers have continuation rights under G.L. c. 32A, § 11A (state employees) and G.L. c. 32B, § 9H (county and municipal employees). Spouses of federal employees who get divorced have COBRA-like continuation rights under the Federal Employees Health Benefits Amendments Act (FEHBA), 5 U.S.C. § 8905a.

Massachusetts "mini-COBRA"

Massachusetts' "mini-COBRA" law requires insured group health plans of employers with two to 19 employees to offer continuation coverage to divorcing spouses of covered employees. G.L. c. 176, § 9. The Massachusetts statute generally tracks the provisions of COBRA. Because a divorcing spouse can continue health coverage for more than 36 months under G.L. c. 175 § 110I and related statutes, invoking mini-COBRA in these cases may not be necessary.

Remarriage rules vary

The right to continue coverage under an ex-spouse's group plan after remarriage differs depending on whether state law or COBRA applies. Under COBRA, remarriage of either party does not affect continuation rights during the 36-month COBRA period. Under state insurance law, *e.g.*, G.L. c. 175, § 110I, parties need to plan for remarriage and how it will affect health insurance. If the dependent spouse remarries, the right to continue coverage under the member spouse's plan ceases. However, if the member spouse remarries, the dependent spouse may qualify for continued coverage via a "rider" to the family plan or an individual policy. *See, e.g.*,

G.L. c. 175 §110I(b). The parties must specify these rights in their divorce judgment. *Id.* The insurer may charge the dependent spouse an added premium for continuing coverage after the member spouse remarries. *Id.*

Alternatives to group insurance coverage

Non-group insurance

Some divorcing couples do not have access to group health insurance. Under state probate laws, if the obligor under an alimony or separate support order does not have group insurance, the court must determine whether other coverage is available at reasonable cost to cover the spouse. *See, e.g.,* G.L. c. 208, § 34. If it is, the judge can order the obligor spouse to purchase a non-group policy for the obligee spouse. *Id.*

Any Massachusetts resident, other than a Medicare or MassHealth enrollee, is eligible for non-group coverage. G.L. c. 176M, § 1. Non-group insurers may impose up to a six-month preexisting condition exclusion or waiting period in some cases. G.L. c. 176M, § 3(b).

Non-group insurers must offer a plan with a standard set of benefits, including hospital and physician services and prescription drugs. G.L. c. 176M, § 2(d). Insurers may vary premiums based on age, geographic area and whether the applicant seeks individual or family coverage.

Public and charitable programs

If affordable non-group coverage is unavailable, the only remaining options are public and charitable programs. The following programs provide free or low-cost health-care assistance to eligible adults in Massachusetts. (This is not an exhaustive list.)

MassHealth (www.state.ma.us/dma)

- Run by Division of Medical Assistance
- Must meet categorical (e.g., elder, disabled) and financial requirements

Medical Security Plan (www.detma.org/workers/msp.htm)

- For Massachusetts residents receiving unemployment benefits who meet income guidelines
- Helps pay COBRA premiums or provides direct coverage

Free Care (<http://www.state.ma.us/dhcfp>)

- Available at hospitals and community health centers to under- and uninsured residents
- Income guidelines

- Overseen by Division of Health Care Finance and Policy

Prescription Assistance

- Individual manufacturers set guidelines
- Information: www.massmedline.com or www.phrma.org

Language in the separation agreement or proposed judgment

Many divorce judgments require the insured spouse to cover the dependent spouse under the employer group plan "as long as there is no extra cost." This general language, which often reflects the parties' separation agreement, does not adequately address the allocation of costs.

It is critical for parties to work out payment details before submitting a separation agreement or proposed judgment to the court. State insurance laws prohibit insurers from charging an additional premium to cover a spouse after divorce. However, ERISA gives employers maximum flexibility to design their employee benefit plans, including whether to pay any portion of the costs. Thus, even though the insurer cannot increase the total premium, the parties may have to contribute more toward the cost of the family plan than before the divorce. Proper planning can prevent future confusion and distress and minimize the risk of coverage loss.

When COBRA applies, the non-member spouse is responsible for payment of premiums. However, a lawyer can ask the judge for an order that the insured spouse reimburse the dependent spouse for the premium cost. Knowing that COBRA coverage will end in 36 months, the lawyer may also seek an order requiring the insured spouse to pay for non-group coverage for the dependent spouse when COBRA ends.

Conclusion

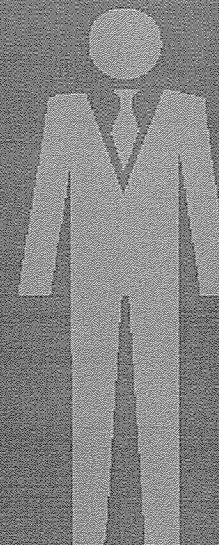
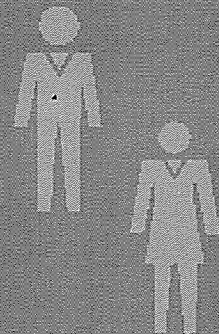
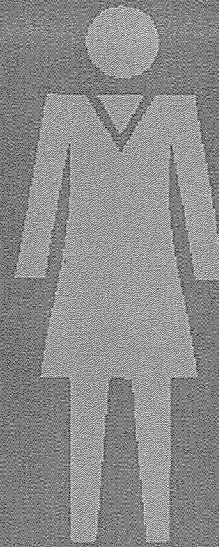
Maintaining health insurance coverage after a divorce or separation is challenging due to the array of applicable laws. Family law practitioners must become familiar with these laws to better assist clients to maintain essential health benefits.

STAYING HEALTHY

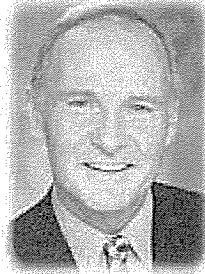
A Guide to Keeping Health Insurance After Divorce

Office of
Attorney General
Tom Reilly
and
Health Law Advocates

November 2002



A Message from Attorney General Tom Reilly



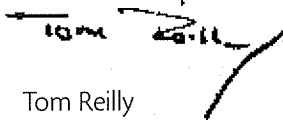
Going through a divorce can be a disruptive and troubling experience. The end of a marriage will mean changes in many areas of one's everyday life. One of the questions that inevitably will come up is what happens to health coverage after divorce.

My office has worked with Health Law Advocates on this issue and I am pleased to provide you with this guide to help you understand your health insurance rights after a divorce or legal separation.


The Office of the Attorney General plays an important role in enforcing insurance laws that protect Massachusetts consumers. Through the Insurance Hotline, the staff of the Attorney General's Office can help answer questions you have about the laws described in this guide. The Hotline (888-830-6277) is open Monday through Friday, from 9:00 a.m. to 5:00 p.m.

I encourage you to read this guide and learn more about the laws that protect your health insurance rights.

Sincerely,



Tom Reilly



Health Law Advocates (HLA) is the public interest law firm of Health Care For All, which is working to create a health care system responsive to the needs of all people. HLA provides free legal representation to income-eligible consumers in Massachusetts who are seeking access to health care. HLA's Divorce Judgment and Health Insurance Project focuses on eliminating the barriers to health insurance after divorce and separation.

HealthLawAdvocates
Fighting for Health Care Justice

H *health insurance is very important* to your physical and financial wellbeing. The cost of even one hospital visit can be devastating when you have no health insurance. Federal and state laws protect your right to health insurance after a divorce. This guide explains your rights and the actions you should take to stay insured when you get divorced.

Many of the rights described in this guide also apply when you and your spouse are **LEGALLY SEPARATED**.[®]

[®] FOR CAPITALIZED TERMS IN BLUE, SEE GLOSSARY ON PAGES 16-17

The information in this guide may not apply in all circumstances. If you are unsure if this information applies to you, or you want assistance with your case, you should contact a lawyer.

**seek help
from a lawyer**
Use the Legal
Resources on page 21

Where can I learn more about my health insurance rights?

If you believe your health insurance rights after a divorce have been violated or you want more information about your rights, contact:

Attorney General's Insurance Hotline	888-830-6277
Health Law Advocates	617-338-5241 or 800-272-4232 x 2980
Mass. Division of Insurance	617-521-7777 413-785-5526
U.S. Dept. of Labor/PWBA (COBRA only)	(617) 565-9600

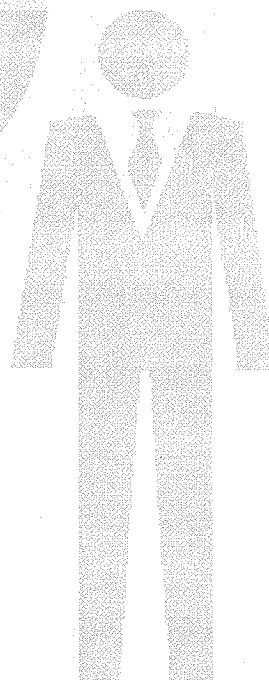
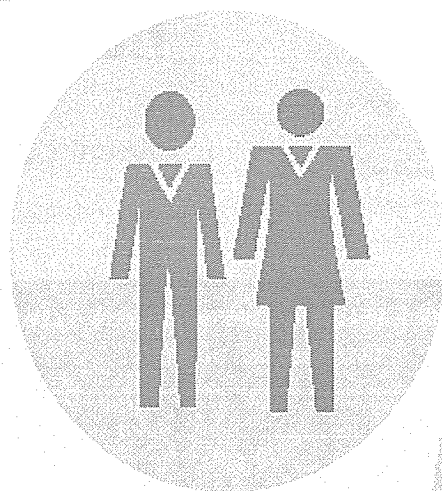
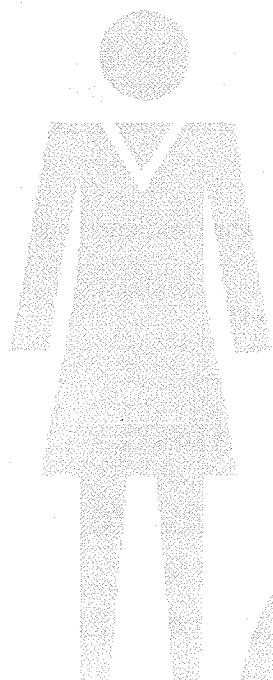
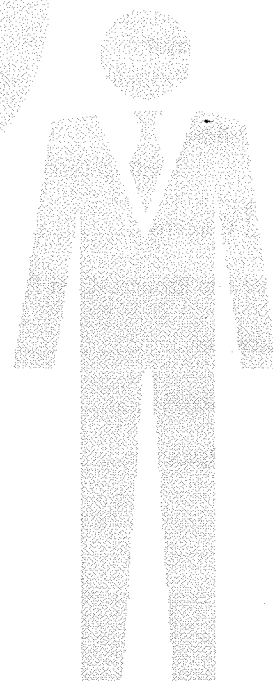
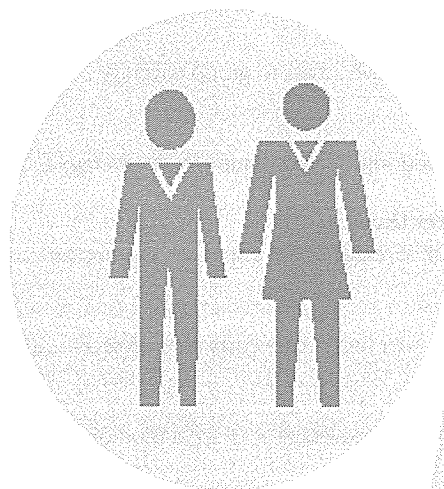


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Health Insurance After Divorce- Questions And Answers

What are my health insurance options when I get a divorce?

Your options depend to a large extent on the type of health coverage you have before your divorce. In some cases, you may have more than one option. Different options provide different rights, which affect how long you will be covered and how much the coverage will cost. Think about your options and take steps to get the coverage you want and need.


If you are enrolled in group health insurance through your job . . .

Divorce will not affect your participation in a GROUP HEALTH PLAN through your job. But your ex-spouse may have the right to continue coverage under your plan, as described in this guide.


If you are eligible for coverage under your spouse's group health plan . . .

In a divorce case, a judge of the PROBATE AND FAMILY COURT must consider whether one spouse has health insurance that can be extended to cover the other spouse. If you are already covered by your spouse's group health plan, the judge will usually require your spouse to keep you on the plan while your divorce case is proceeding through court. If you need to, you can get a temporary order from the judge requiring your spouse to maintain this coverage.

Once your divorce is FINAL, in most cases you have the right to continue coverage under your ex-spouse's group plan. The Probate and Family Court judge can order your spouse to add you to the group plan if you are not enrolled but are eligible for coverage.

 **HELPFUL HINT:** Before your divorce is final, compare the benefits and costs of the health insurance options available to you. Be prepared to explain to the Probate and Family Court judge the type and cost of the coverage that you want.

insured or self-insured?



Self-insured companies usually hire an insurance company or HMO to process claims, so having an insurance company ID card does not mean your group plan is insured.

See page 6 for how to find out if a plan is self-insured

Under the Massachusetts law, an *insurance company* or *HMO* cannot charge a higher **PREMIUM** for your family coverage than it charged before the divorce. But your ex-spouse's *employer* does not have to keep contributing to *your* part of the health insurance premium. So make sure your *divorce judgment* makes clear whether you or your ex-spouse is responsible for the premiums.

If your spouse works for a private employer . . .

To figure out your rights to continued coverage under your ex-spouse's group health plan, you must answer the question:

Is the plan **INSURED** or **SELF-INSURED**?

With an insured group plan, the employer pays premiums to an insurance company or HMO, which accepts the financial risk of paying claims for benefits. When a plan is self-insured, the employer has the financial risk for paying employees' claims. *Insured plans must follow Massachusetts insurance laws; **self-insured plans are exempt.***

If your spouse's group health plan is insured . . .

Massachusetts insurance laws allow you to continue coverage on your ex-spouse's group plan *as if no divorce took place*, until you or your former spouse remarries, for as long as your ex-spouse is eligible for the group plan. (SEE PAGE 5 FOR YOUR RIGHTS UPON REMARRIAGE.)

Your right to the Massachusetts law option is affected by your **DIVORCE JUDGMENT** or **JUDGMENT OF SEPARATE SUPPORT**. Make sure you understand your health insurance options before you appear in front of the Probate and Family Court judge for a **FINAL** judgment. You can write language in a **SEPARATION AGREEMENT** or a **PROPOSED JUDGMENT** requiring your spouse to continue health coverage for you after the divorce. You must have this language approved by the judge.

If your spouse's group health plan is self-insured . . .

A federal law called **COBRA** allows divorced spouses of employees of most private employers (with 20 or more employees) to continue group coverage. (Government employers and most church organizations are exempt from COBRA.) Coverage lasts for up to 36 months from the date the divorce is final. The group health plan is allowed to charge the full individual premium plus 2 percent.

COBRA also applies to many group plans that are insured. In these cases, you have the right to continue coverage under both COBRA and the Massachusetts law.

If your spouse worked for a small employer in Massachusetts (with 2 to 19 employees), a state law called "mini-COBRA" gives you rights similar to COBRA.

You may also have COBRA rights if you and your spouse are **LEGALLY SEPARATED**. Some **SELF-INSURED** plans define "legal separation" very broadly, so be sure to confirm your right to continue coverage under your spouse's plan after you separate but before you divorce.

Figuring out your health insurance rights can be difficult. If you have trouble getting answers on your own, **seek help from a lawyer**. You can also call the Attorney General's Insurance Hotline (888-830-6277) or the U.S. Department of Labor (617-565-9600; COBRA questions only) for help.

If you elect COBRA, keep track of when your 36 months of coverage will end, so you will be prepared to get other insurance.

See Steps Before Divorce on page 6

Use the Legal Resources on page 21

insured or self-insured?

If your spouse works for a government employer . . .

You have the right to continue health coverage under your ex-spouse's group plan after divorce. If your spouse is a Massachusetts state, county or municipal employee or retiree, you have the rights under Massachusetts insurance laws *described on page 2 of this guide*. However, if your spouse works for a federal government agency, you generally have more limited rights, which are similar to COBRA.

For more information on your benefits as the former spouse of a state employee or retiree, contact the Group Insurance Commission (GIC) at 617-727-2310 or www.state.ma.us/gic

For more information about health benefits as the divorced spouse of a federal employee, contact the particular agency's personnel office or visit the Federal Employees Health Benefits Program (FEHBP) web site at www.opm.gov/insure/health/former_spouse/index.htm

If you do not have group coverage . . .

If you cannot afford nongroup coverage, see Free and Reduced-Cost Programs on pages 14-15

If you do not have access to group health coverage through your job or your spouse's plan, you can buy **NONGROUP** coverage. The Probate and Family Court judge can order your spouse to pay for a nongroup policy if you request it and the coverage is affordable. Nongroup insurance is available for a premium to any Massachusetts resident who does not have Medicare or MassHealth.

You may also choose nongroup coverage if you do not want to stay on your ex-spouse's group plan because of safety concerns due to abuse or intimidation, or for other reasons.

For more information on nongroup (and **SMALL GROUP** options for self-employed people), contact the Massachusetts Division of Insurance (617-521-7777 or www.state.ma.us/doi) or call the Attorney General's Insurance Hotline at 888-830-6277

Will my ex-spouse's remarriage affect my right to continue group coverage under my ex-spouse's plan?

Under the Massachusetts law . . .

You can stay on your ex-spouse's group plan after he or she remarries, as long as your **DIVORCE JUDGMENT** provides for it. If you want this option, you must make sure to put it in the **SEPARATION AGREEMENT** or **PROPOSED JUDGMENT** you submit to the Probate and Family Court judge for approval. The insurance company or HMO is allowed to charge a higher premium for your coverage after your ex-spouse remarries.

Under COBRA . . .

Your ex-spouse's remarriage will *not* affect your right to continue coverage under **COBRA**. Also, under **COBRA**, the health plan cannot charge an extra premium for your coverage because of your ex-spouse's remarriage.

Will my remarriage affect my right to continue group coverage under my ex-spouse's plan?

Under Massachusetts laws, your right to continue coverage under your ex-spouse's group plan ends when *you* remarry. But if your continued coverage is under **COBRA**, your remarriage does not affect your right to continue coverage for the 36-month **COBRA** period.

If your coverage under the Massachusetts law ends because you or your ex-spouse remarries within 36 months of your divorce, you may be able to continue coverage under **COBRA** for the rest of the 36-month period. You will need to contact the administrator of your ex-spouse's health plan. It is a good idea to let the administrator know when you first get divorced that you want to reserve your right to **COBRA**.



remarriage

seek
help from
a lawyer
Use the Legal
Resources on
page 21

What steps should I take **before my divorce is final** to continue group health coverage under my spouse's plan?

NOTE:

The SPD may explain only your right to continue coverage under COBRA for 36 months. You may also have the right to continue coverage under Massachusetts law for a longer period if the plan is insured.

Step One:

- Contact the insurance company or HMO, or the human resources office of your spouse's employer, to get more information about the group plan.
- Ask for confirmation, in writing, that your coverage will not be terminated before the divorce is final.
- Ask whether the plan is **INSURED** or **SELF-INSURED**.

Step Two:

- Request a **SUMMARY PLAN DESCRIPTION** (or **SPD**). The SPD describes your benefits. You have a right to receive the SPD. The SPD should explain whether the plan is insured or self-insured, and if COBRA applies. The SPD must also state the name and address of the person or company that administers the health plan (this is called the **PLAN ADMINISTRATOR**).

Step Three:

- Read the SPD and any other documents that describe the group coverage. Become familiar with your benefits and your rights under the plan.



HELPFUL HINT: Keep notes of conversations you have about your health coverage, including the person's name and phone number and a general description. It's a good idea to send a letter confirming what you discussed. Always keep a copy of all letters.

What steps should I take after my divorce is final to continue group coverage under my ex-spouse's plan?

Step One:

- Within 60 days after your divorce is final, you (or your ex-spouse) should contact the PLAN ADMINISTRATOR. Inform the Plan Administrator that the divorce is final and that you intend to continue group coverage. Under COBRA, *you must inform the Plan Administrator within 60 days or you will lose your right to continue coverage.*

The Plan Administrator may ask for a copy of the DIVORCE JUDGMENT to confirm your right to continued coverage under Massachusetts law. The administrator may also require you to complete certain forms to choose continued coverage after your divorce.

Step Two:

- Keep in contact with the plan. Always let the Plan Administrator know if your address changes, so you will receive important notices about your coverage. Keep a copy of all notices and your correspondence with plan representatives, including a record of any premium payments that you make.

Step Three:

- Protect your rights. If your ex-spouse does not comply with the health insurance requirements of your divorce judgment, or if the group health plan cancels your coverage, *seek help from a lawyer.*

HELPFUL HINT: If you expect to have large medical bills or you want a medical treatment pre-approved, call the Plan Administrator to confirm your benefits. If you must pay for health services when you get them, confirm that reimbursement will be sent to you at your current address.

You must
inform the
Plan
Administrator
of your
divorce within
60 days or you
will lose your
right to
continue
coverage
under COBRA.

Use the Legal
Resources on
page 21



The Probate and Family Court judge cannot order your ex-spouse's employer to keep contributing to your part of the health insurance premium. But the judge can decide, as between you and your spouse, who will pay for health care costs.

This is why it is so important that your **divorce judgment** addresses who will be responsible for the costs of health coverage.

Who will pay my health insurance premiums and other health care costs after my divorce?

You and your spouse may specify in a **SEPARATION AGREEMENT** who will pay your health insurance premiums and any health care costs that are not covered by your health plan. If a Probate and Family Court judge approves your separation agreement, these provisions will become part of your **DIVORCE JUDGMENT**.

If you and your ex-spouse do not reach agreement, the judge will decide who pays and how much, and will put this decision in your divorce judgment. You may give the judge suggested health insurance language in a **PROPOSED JUDGMENT**.



See pages 12-13 for a Checklist of things to remember to protect your health insurance after divorce

Who pays for health coverage can affect your responsibility for taxes. If you have concerns about taxes, **seek help from a lawyer**.

Use the Legal Resources on page 21



HELPFUL HINT: In writing a separation agreement or a proposed judgment, be sure to consider both your current and long-term health insurance needs. You want your final divorce judgment to provide maximum flexibility for future adjustments so you can avoid having to return to court later.


If I have children, can they get health coverage from their other parent after we get divorced?

The law requires orders for **CHILD SUPPORT** to include health coverage. In most cases, if your children live with you (you are the **CUSTODIAL PARENT**) and you do not have insurance, a **PROBATE AND FAMILY COURT** judge will order the **NON-CUSTODIAL PARENT** to provide health coverage for the children, if it is available "at reasonable cost." In general, health insurance is considered available at reasonable cost if the parent gets it through a job.

How long can my children stay on the other parent's group health plan?

In general, children can be covered under a parent's plan for as long as they are "dependent." Under most health plans, a child is dependent up to a certain age (say 21). Many plans extend this age if the child is a full-time student. A Probate and Family Court judge can order a parent to provide health insurance for a child up to age 23, if the child lives with a parent and is a financially dependent college student.

After a child is no longer dependent, the child still may have the right to continue coverage for a period of time under **COBRA**.
(SEE PAGE 3 FOR MORE ABOUT COBRA.)



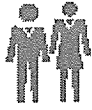
Even if you and your child's other parent were never married, a judge can order health insurance coverage for the child if the other parent is considered legally responsible (for example, if he has been shown to be the child's natural father).



NOTE:

Many health plans continue coverage for physically or mentally disabled children regardless of age. The Division of Insurance can give you information on plans required to offer this coverage (617-521-7777 or www.state.ma.us/doi).

children



Children

If nongroup is too expensive, see Free and Reduced-Cost Programs on pages 14-15

What if my children are not eligible for group health coverage?

If you cannot get group health insurance for your children through your job or the other parent's plan, you can purchase a NONGROUP policy to cover them. A Probate and Family Court judge may also order the non-custodial parent to pay for the children's nongroup coverage if it is affordable.

For more information on nongroup insurance, contact the Division of Insurance (617-521-7777 or www.state.ma.us/doi)

Who will pay the premiums for my children's health insurance and for their health care costs that are not covered by insurance?



See pages 12-13 for a Checklist of things to remember to protect your children's health insurance

You and the other parent may agree on who will pay for the children's health care costs. This agreement is subject to approval by the PROBATE AND FAMILY COURT judge, who has the final say about who must provide and pay for the children's coverage. If you and the other parent cannot agree, you may give the judge suggested health insurance language in a PROPOSED JUDGMENT.

The judge follows the state CHILD SUPPORT GUIDELINES in making a decision about the children's health insurance. In most cases, if you do not have insurance and the other parent does, the judge will require the other parent to put the children on his or her health plan. The Child Support Guidelines allow the judge to require the CUSTODIAL PARENT to pay the first \$100 per child per year for routine medical and

dental costs that are not covered by insurance (such as co-payments for doctor visits and prescriptions). The judge can make different orders in appropriate cases.

Under the Child Support Guidelines, if the **NON-CUSTODIAL PARENT** has to pay an additional premium to insure the children, a judge may reduce **CHILD SUPPORT** owed by that parent to reflect the extra cost. Similarly, where the custodial parent provides the children's insurance, the judge may increase the amount of child support to reflect the extra cost. In general a judge will *not* adjust child support if the children can be added to existing insurance at no extra cost. A judge may also adjust child support for *non-routine*, uninsured medical expenses (such as braces) that a parent pays.

What if the other parent ignores a court order to provide health insurance for our children?

If you need help enforcing a child support order, including an order for health insurance, you may contact the Child Support Enforcement Division of the Massachusetts Department of Revenue (800-332-2733). Or you can contact a lawyer, using the resources in this guide. You should also get legal help if you need a judge to modify your child support order later because your circumstances have changed.

HELPFUL HINT: Before you sign an agreement with the other parent or get a final judgment from the court, make sure you know who will pay for your children's uninsured health costs and how you will exchange bills for these expenses. Be prepared to discuss the types and anticipated cost of any large, uninsured expenses with the other parent and the Probate and Family Court judge.

In general,
a judge
will not

adjust child
support if
children can be
added to
existing
insurance at no
extra cost.



seek
help
from a
lawyer
Use the Legal
Resources on
page 21

children



I have taken steps to protect my health coverage after divorce:

Before my divorce is final SEE PAGE 6

- ✓ I have written information about my spouse's group health plan.
- ✓ I know whether my spouse's group plan is *insured* or *self-insured*. SEE PAGES 2-3
- ✓ I understand my benefits and rights under my spouse's plan.
- ✓ I have written confirmation from my spouse's plan that I will be covered until our divorce is final.
- ✓ If I do not have written confirmation, I asked the judge to order my spouse to continue my coverage until our divorce is final.
- ✓ If my spouse does not have group health coverage, I have researched *nongroup* options. SEE PAGE 4
- ✓ My spouse and I agree on how my health insurance will be provided after our divorce and we have written a *separation agreement* to give to the judge.
- ✓ If my spouse and I do not agree on how my health insurance will be provided after our divorce, I have written a *proposed judgment* to give to the judge.

If you have health coverage through your job, see page 1

SEE
OPPOSITE
PAGE FOR
ITEMS TO
INCLUDE



After my divorce is final SEE PAGE 7

- ✓ I notified my ex-spouse's health plan of our divorce within **60 days** of the final judgment.
- ✓ I confirmed in writing that my ex-spouse's plan will continue my coverage after the divorce.
- ✓ I gave my ex-spouse's plan a copy of the health insurance part of our divorce judgment.
- ✓ I filled out any forms required to continue coverage under my ex-spouse's plan.
- ✓ I received an insurance card and documents explaining my coverage.
- ✓ I gave my ex-spouse's health plan my current address.
- ✓ I will inform my ex-spouse's plan of address and other changes that affect my coverage.

If private health insurance is not available, see Free and Reduced-Cost Programs on pages 14-15

checklist



I have included the following in a Separation Agreement or Proposed Judgment:

For my health insurance

- ✓ How my medical coverage, and dental coverage, if applicable, will be provided after the divorce
 - Through my job-based health plan, or
 - Through my ex-spouse's group health plan, or
 - Under a nongroup health insurance policy, or
 - By other means
- ✓ Whether my health coverage will continue after my ex-spouse remarries SEE PAGE 5
- ✓ Who will pay the premiums for my medical and/or dental coverage
- ✓ How my ex-spouse and I will divide my medical and/or dental expenses that are not covered by insurance

For my *children's* health insurance SEE PAGES 9-11

- ✓ How medical coverage, and dental coverage, if available, will be provided for my children after my divorce or separation from their other parent
 - Through my job-based health plan, or
 - Through the other parent's group health plan, or
 - Under a nongroup health insurance policy, or
 - By other means
- ✓ Who will pay the premiums for my children's medical and/or dental coverage
- ✓ How the other parent and I will divide the children's *routine* expenses that are not covered by medical or dental insurance
- ✓ How the other parent and I will divide the children's *non-routine* expenses that are not covered by medical or dental insurance

If a judge approves your *separation agreement* or *proposed judgment*, it will be legally binding on you. **Seek help from a lawyer** to prepare these important documents.

Use the Legal Resources on page 21

checklist

You may qualify for free or reduced-cost health care . . .

If you cannot afford private health insurance, you may be able to get health care free or at reduced cost through one of the programs below. This is a partial list; for more information about these and other health programs for Massachusetts residents, call:

Health Care For All's Health Helpline

800-272-4232

Trained counselors can answer your questions about the health care system, provide information, and refer you to appropriate health care resources.

MassHealth

888-665-9993

TTY: 888-665-9997

www.state.ma.us/dma

MassHealth is a state-run insurance program. You are eligible if your income is low enough and you meet certain other requirements. Your children may qualify even if you do not. Special rules apply to disabled adults and children.

Children's Medical Security Plan (CMSP)

800-909-2677

www.cmspkids.com

CMSP pays for primary and preventive care for children who cannot get MassHealth. CMSP is free if your income is low enough; otherwise, you pay a small premium.

Healthy Start

800-531-2229

Healthy Start helps low-income pregnant women who are uninsured get medical care and other services they need to have a healthy baby.

Hospital and Health Center Free Care

Hospitals and community health centers offer free and reduced-cost care to people without insurance who have low income or very large medical bills. You can apply at the hospital or health center where you get your care. For general information and questions about Free Care, contact the Mass. Division of Health Care Finance and Policy at 617-988-3100 or www.state.ma.us/dhcfp.

For a list of health centers, call the Mass. League of Community Health Centers at 800-475-8455 or visit www.massleague.org

Medical Security Plan (MSP)

800-914-4455

www.detma.org/workers/msp.htm

MSP is open to people getting Massachusetts unemployment benefits, whose income is below a specific amount. MSP helps pay COBRA premiums and provides direct coverage.

For information on drug company programs, contact MassMedLine at 866-633-1617 or

www.massmedline.com

Prescription Drug Assistance

Prescription drugs are very costly if you do not have insurance. You may be able to get free or reduced-cost drugs from the company that makes them.

If you are 65 or over or disabled, you may qualify for drug coverage through Prescription Advantage.

For information on Prescription Advantage, call 800-243-4636 or visit www.800ageinfo.com

free & reduced-cost programs



glossary

COBRA – "Consolidated Omnibus Budget Reconciliation Act of 1985."

COBRA requires many employers to offer continued health coverage to divorced and separated spouses and their children.

CHILD SUPPORT – Generally, child support is what a non-custodial parent must pay to the custodial parent to support their children. A Probate and Family Court judge may order child support on a temporary basis or as part of a final judgment. Child support orders must include health insurance.

CHILD SUPPORT GUIDELINES – These are the rules a Probate and Family Court judge must follow in figuring out how much child support the non-custodial parent must pay.

CUSTODIAL PARENT – This is the parent in a divorce or separate support case who is given physical custody of the child and to whom child support is paid.

DIVORCE JUDGMENT – A divorce judgment is the Probate and Family Court judge's final decision on how to divide a couple's property and income, and on custody, visitation and support of any children of the marriage.

FINAL – When the Probate and Family Court judge issues a divorce judgment (or a judgment of separate support), the divorce does not become final (or "absolute") until 90 days later.

GROUP HEALTH PLAN – Individuals with group insurance are covered as part of a group of people. Most job-based health insurance is group coverage.

INSURED HEALTH PLAN – An employer has an "insured" plan for its employees when the employer pays premiums to an insurance company or HMO to cover the entire cost of health care for employees and their families.

JUDGMENT OF SEPARATE SUPPORT – A Probate and Family Court judge issues a judgment of separate support when a couple has filed an action for separate support. The judge can make the kind of permanent orders allowed in a divorce, such as dividing property, child support, etc., except the spouses are not legally free to remarry. One reason a person might file for separate support is religious objections to divorce.

LEGALLY SEPARATED – In Massachusetts, a person can get a judgment of separate support but there is no formal status called "legally separated." Since self-insured group plans define "legally separated" differently, it is important to confirm your right to continue health coverage when you are physically separated from your spouse but not divorced.

NON-CUSTODIAL PARENT – This is the parent in a divorce or separate support case who is not given physical custody of the child.



NONGROUP HEALTH PLAN – An individual has nongroup health coverage when he or she buys insurance directly from an insurance company or HMO, not as part of a group. Nongroup health plans can cover individuals or families.

PLAN ADMINISTRATOR – This is the person or company responsible for managing benefits under a group health plan through an employer. Even with a self-insured group plan, an employer may hire an outside company, such as an HMO, to be the Plan Administrator.

PREMIUM – This is the amount that an insurance company or HMO charges (usually by the month) to provide benefits to a person under a health plan.

PROBATE AND FAMILY COURT – This is the department of the Massachusetts trial court system that deals with divorces, separate support actions and child support. The Probate and Family Court has 14 divisions, one in each county. Each division has an elected register of probate that runs the registry where case files are maintained. The Court's staff includes judges, registry staff, and probation officers.

PROPOSED JUDGMENT – When a couple does not reach agreement on certain issues, each side may propose to the Probate and Family Court judge what should go in the final divorce (or separate support) judgment about those issues. The proposal should be in writing. The judge has the final say whether or not to accept the proposal and include it in the judgment.

SELF-INSURED HEALTH PLAN – An employer is "self-insured" when, instead of paying an insurance company or HMO to cover all of its employees health care costs, the employer itself covers these costs. However, a self-insured employer may hire an insurance carrier or HMO to process the claims filed by employees and their family members.

SEPARATION AGREEMENT – This is an optional agreement that separating and divorcing couples may reach to divide their property and income, to decide on who will care for the children, etc. The agreement should be in writing. The couple must present the agreement to the Probate and Family Court judge for approval. The judge decides whether to approve the agreement and make it part of the final divorce (or separate support) judgment.

SMALL GROUP HEALTH PLAN – In Massachusetts, a small group health plan is one in which there are no more than 50 eligible employees. Self-employed people also qualify for small group insurance.

SUMMARY PLAN DESCRIPTION (SPD) – This document explains the health services a group plan will cover. The SPD also describes important legal and financial details of the health plan. Members of most employer group plans have a right to get an SPD.



notes

notes





notes

Select Legal Resources

The information in this guide is general and may not apply in all circumstances. For assistance with specific questions, ***seek help from a lawyer***. Only a lawyer can give you legal advice about your particular case. Below are some resources for finding an attorney or getting legal information and assistance.

Child Support Enforcement Division of the Mass. Department of Revenue

800-332-2733

www.cse.state.ma.us

For help obtaining or enforcing a child support and medical support order for your children.

Health Law Advocates

617-338-5241 or 800-272-4232 x 2980

www.hla-inc.org

Free legal assistance with questions about health insurance after divorce; income guidelines apply. (Note: Health Law Advocates does *not* provide general legal services for divorce and family law matters.)

Legal Advocacy & Resource Center

617-742-9179 or 800-342-5297

www.larcma.org

Free legal information and referrals for free legal assistance (if eligible) and to private attorneys.

Massachusetts Bar Association Lawyer Referral Service

617-654-0400 or 866-627-7577

www.masslawhelp.org

Referrals to attorneys statewide; help with obtaining reduced-fee arrangements.

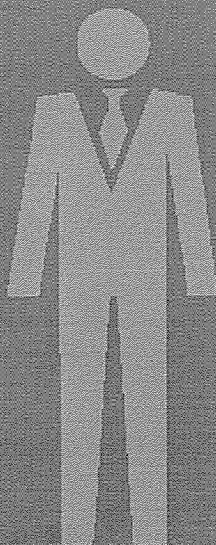
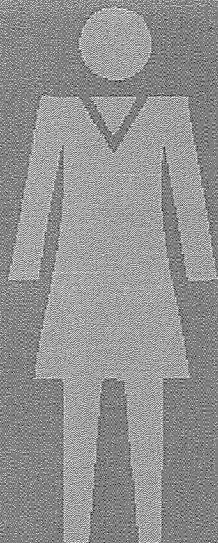
National Lawyers Guild

617-227-7008

Referrals to attorneys statewide; help with obtaining reduced-fee arrangements.

"Lawyer for the Day" Programs

Help completing court paperwork and information on court procedures; contact your local Registry of Probate (under County Government listings in phone book "blue pages," or ask at the Probate and Family Court) for availability and schedules.



Office of the Attorney General
Insurance Division
200 Portland Street • Boston, MA 02114
617-727-2200 • Fax: 617-727-1047
Insurance Hotline: 888-830-6277
www.ago.state.ma.us



Health Law Advocates
30 Winter Street, Suite 940 • Boston, MA 02108
617-338-5241 • Fax: 617-338-5242
www.hla-inc.org

