

The 2013 Domestic Attorney's Handbook to the South Carolina Employee Health Insurance Program

INTRODUCTION

The 2013 Domestic Attorney's Handbook to the South Carolina Employee Health Insurance Program is a practitioner's guide to the health insurance benefits provided pursuant to the South Carolina Public Employee Benefit Authority (PEBA). The purpose of the handbook is to assist practicing domestic attorneys in identifying the potential issues and pitfalls that they may encounter when representing clients who are/were employed by the State of South Carolina. This handbook is not intended to discuss or to represent the specific terms of coverage that any specific contract for insurance may provide.

WHAT IS PEBA?

PEBA stands for the South Carolina Public Employee Benefit Authority. When you see "PEBA" mentioned in this material, it is referring to the South Carolina Public Employee Benefits Authority.^[1] Health insurance for employees, past and present, is administered by PEBA. Previously, there was an Employee Insurance Program (EIP) and the S.C. Retirement System. Both are now part of PEBA. The S.C. Retirement System is now the PEBA Retirement System.

WHY MUST DOMESTIC ATTORNEYS BE FAMILIAR WITH THE REQUIREMENTS OF PEBA?

As a practicing family court attorney, you will most likely represent someone who is an employee or married to an employee of the State of South Carolina. If you are not familiar with the PEBA program and its requirements as applies to divorces and court orders, you may be committing malpractice in the representation of your domestic clients.

WHO IS ELIGIBLE TO PARTICIPATE AND TO RECEIVE STATE HEALTH INSURANCE BENEFITS?

Only active employees, survivors of employees, spouses and children of active employees, some local government organizations, those individuals required to be covered pursuant to court order, and some retirees may be eligible for benefits under the South Carolina Public Benefit Authority (PEBA) insurance program.

PRACTITIONER'S NOTE: An individual may be eligible for the program, but may have elected not to participate. In such an instance, it is advisable to get a court order addressing the coverage and possibly the participation issue. For instance, a husband who is employed as a teacher may have opted out of the program. Therefore, his spouse may not be covered. It may be necessary in this instance to have the court order address coverage for the other spouse and require the employee spouse to obtain coverage so the non-employee spouse can obtain coverage.

A. EMPLOYEES

An employee is only eligible for PEBA insurance benefits provided they are:

A) Currently employed by:

- 1) the state of South Carolina;
- 2) a South Carolina public school district;
- 3) a public, higher education institution of South Carolina;
- 4) or a **participating**, local sub-division (*See* S.C. Code Ann. Sec. 1-11-720 for a complete list of eligible, but not necessarily participating, subdivisions), **and**

B) Works in a permanent, full-time position^[2], **and**

C) Receives compensation from:

- 1) the state of South Carolina;
- 2) a public school district in South Carolina;

- 3) a public higher education institution of the state of South Carolina; or
- 4) a participating, local sub-division.

A. **RETIREES**[\[3\]](#)

Sometimes a retiree may be eligible for health insurance coverage provided their employer (a public school district for the state of South Carolina, for example) participated in the state of South Carolina insurance program and that person retired after obtaining the appropriate number of years of service, reached a certain age, or receives disability under an approved plan. The retiree will know whether or not they receive disability under an approved plan and should be able to provide written confirmation of such. Typically, the State employer will pay a portion of the premiums.

If, for whatever reason, a spouse is not covered under their State employed spouse's benefits program and the State employed spouse is preparing to retire, then they have thirty-one (31) days from the date that spouse retires to enroll the current spouse for coverage.

PRACTITIONER'S NOTE: Coverage in this instance is not automatic and therefore the practitioner must notify their client the need to elect coverage within the thirty-one (31) day time period. It is also advisable in the disengagement letter to notify your client of the importance of electing coverage if their divorced spouse later retires even though the court order may require coverage.

A. **SPOUSE**

A spouse is only eligible for health insurance under PEBA provided they are either: 1) a current, lawful spouse of an employee/retiree or 2) a former spouse who is required to be covered pursuant to a divorce decree or order of separate support and maintenance.

PRACTITIONERS NOTE: It is important to know that only a current spouse **or** a divorced spouse may be covered under the benefits program. Both spouses cannot be covered at the same time. As discussed below in the **Divorce/Separation** section, the practitioner must include language in the court order and take timely[\[4\]](#), pro-active steps to insure his client is provided coverage. Also, it is a good idea in drafting pre-nuptial agreements and post-nuptial agreements to reveal whether a previous spouse is covered under the PEBA insurance program. Failing to make such a disclosure could cause problems.

Also, if both spouses are eligible as employees under the program, they may not be covered as a spouse under the plan. This would be applicable under a situation where both spouses are employees of the State, for example.

DIVORCE/SEPARATION

Being familiar with PEBA and its requirements is a must if you are representing clients in family court who are married to a State employee or who are a State employee. Even though under PEBA a spouse may remain on their participating spouse's health insurance plan, dental plan, vision plan and life insurance plan until the divorce is final, the State employed spouse can remove their spouse from the plan's coverage for health insurance, vision, dental, etc. **prior to the final divorce order** being signed, provided they a) send to their plan administrator^[5] a copy of the recorded complaint from family court^[6] or 2) provide a court order showing that a divorce/separation is in progress and attach a completed Notice of Election (NOE)^[7]. An NOE is required to be sent in anytime there is a change of coverage.

PRACTITIONERS NOTE: It is important in domestic actions that the temporary order address health benefits coverage. You never know when a spiteful spouse may try to drop the other spouse from the PEBA plan. Since only a recorded complaint and NOE is needed to change coverage, it is wise to send the complaint and the court order requiring coverage to the State employee's benefits administrator and PEBA (South Carolina Employee Benefit Authority (PEBA), 202 Arbor Lake Drive, Columbia, SC, 29223 or PO Box 11661, Columbia, SC 29211) within thirty-one (31) days of the date the document was recorded. A simple letter from an attorney is not sufficient to continue coverage. It goes without saying that if your client is employed by the State of South Carolina that they not leave their spouse uninsured without an order allowing so. The court may not look too highly upon one spouse removing another spouse from an insurance plan, thereby forcing them to incur additional costs by having to obtain insurance through the private marketplace or COBRA.

Once the parties are divorced, a spouse can drop their spouse from coverage by completing the appropriate NOE and submitting it with the court order to their plan administrator. A former spouse can only be covered through PEBA provided the family court order requires this to be done. A copy of the order showing the former spouse is to be covered along with their former step children, if applicable, as well as an NOE must be sent to the employee's plan administrator and to PEBA. The practitioner must also include in the order the type of plan (medical, dental, vision, etc.) under which the former spouse and/or former stepchildren must be covered. It is not sufficient to say only that health insurance is to be provided. Therefore, the language must be very specific as more fully explained below.

CHILDREN

A child may be covered provided that they are younger than the age of twenty six (26); is not eligible under another employer-sponsored group health plan; and is the employee's natural

child, adopted child or a child placed with the covered individual for adoption, step-child, foster child, a child which the employee has legal custody of pursuant to court order, or a child required to be covered by court order. The child does not have to be a full-time student for health (medical, dental, and/or vision) insurance.

In the event that both parents have health insurance under the plan, only one parent can cover that child. Medical insurance coverage, including vision and dental, will end on the last day of the month in which the child turns twenty six (26), unless of course, the child is deemed incapacitated and a dependent. Also, a child cannot be covered under the plan if they are eligible under an employer-sponsored plan either as an employee or a spouse. For instance, if a child is 23 years old and employed by BMW, they cannot be covered under PEBA.

COURT ORDERS

In order for there to be coverage under PEBA, the court order needs to specifically refer to the type of health insurance (medical, dental, and/or vision) coverage to be provided. Also, just because an employee has a family health insurance plan does not mean all of the family members will be automatically covered. The order must refer to the parties and children/step-children by name and the type of health insurance to be provided. The order should also specifically require the State employee/retired spouse to cover the other spouse/children under the PEBA plan. Here is some suggested language:

John Doe, an employee (or retiree) of the State of South Carolina is hereby ordered to provide medical, dental, and vision insurance for his former spouse, namely Jane Doe, under his health insurance plan with the South Carolina Public Employee Benefit Authority (PEBA). John Doe and Jane Doe shall cooperate with each other in order to have all documents signed which are required by the PEBA benefits office in order to enroll Jane Doe into the medical, dental, and vision insurance program.

John Doe, an employee (or retiree) of the State of South Carolina is also ordered to provide medical, dental, and vision insurance for his children, Jimmy Doe and Johnny Doe, under his health insurance plan with the South Carolina Public Employee Benefit Authority (PEBA). John Doe and Jane Doe shall cooperate with each other in order to have all documents signed which are required by the PEBA benefits office in order to enroll the children, Jimmy Doe and Johnny, into the medical, dental, and vision insurance program.

This court is retaining jurisdiction to issue an amended/supplemental order should additional language be needed to insure that medical, dental, and vision insurance

with the South Carolina Public Employee Benefit Authority is provided as intended by the parties and this court.

PRACTITIONERS NOTE: Two key things divorce attorneys must be mindful of are: 1) the importance of the specific timeframe under PEBA and 2) that the employee's plan administrator and PEBA must be made aware of a change in marital status. Even though a court order may demand coverage, it is a requirement that the plan administrator and PEBA be given a copy of the signed order within 31 days of the recording of the court order. The Notice of Election (NOE) must accompany the court order. Although it is not required, it could prove beneficial prior to receiving the court order, that the attorney writes a letter to the plan administrator telling them of the upcoming change.

If the employee who is ordered to provide medical, vision, or dental insurance is not enrolled for such coverage, they may be required to enroll themselves for such coverage in order for their ex-spouse or children to receive coverage. If this is the case, the court order should require the employee to obtain the specific type of coverage as well.

Also, to calculate the premium amount for the non-state employed spouse, you take the original premium amount and subtract the cost of covering the non-state employed spouse. For example, if the premium for an employee only is \$200 and the premium amount for an employee and a spouse is \$300, then the premium amount for the non-state employed spouse would be \$100.00. It is always a good idea to get in writing from the plan administrator a confirmation of premium amount prior to entering into an agreement or final court order.

PRACTITIONERS NOTE: It is not enough to rely on the opposing party to contact the benefits administrator or PEBA, even if court ordered. Coverage is not automatic.

OTHER CONSIDERATIONS

Reconciliation

If an insured spouse drops their spouse from coverage and then reconciles, they will not be able to add their spouse back to the plan until the next open enrollment period or unless a special eligibility situation arises. A lapse in coverage could cause a problem with the coverage of pre-existing conditions.

Remarriage

In the event of re-marriage, an employee/retiree cannot cover a divorced spouse and current spouse under the same type of health insurance plan at the same time. An employee can cover

one spouse under one plan, for instance vision, and the other spouse under dental unless otherwise ordered.

Life Insurance

Under no circumstances can an employee cover a former spouse or their stepchildren under a dependent life insurance policy even if ordered.

THE TYPES OF HEALTH PLANS AVAILABLE

Currently, there are two health insurances plans available: 1) Blue Choice Health Plan, which is operated as an HMO or 2) the State Health Plan operating as a PPO. There are differences in the plans. Premiums and other information about the plans can be found at www.eip.sc.gov. One thing that the practitioner needs to be aware of is that the State Health Plan has a Standard Plan and a Savings Plan. The plans provide different coverage at different costs. Contact the Benefits Administrator for a comprehensive list of differences; however, as a rule of thumb the Standard Plan has lower deductibles and higher premiums. The Savings Plan has lower premiums and higher deductibles.

PRACTITIONER'S NOTE: The MoneyPlu\$ program does allow for certain tax benefits, Flexible Spending Accounts (FSA), and Healthcare Spending Accounts (HSS). Therefore, the practitioner needs to discover whether the employee is participating in the MoneyPlu\$ program and whether or not there is in fact a medical spending account that has a balance in it which may be devisable under a family court order.

ENROLLMENT

Unless there is a special exception, annual enrollment is in October and open enrollment is in odd numbered years in October. Special eligibility events will allow an eligible employee to add or change coverage provided it is done within thirty-one (31) days of the event and a Notice of Election (NOE) is provided to the benefits administrator within the thirty-one (31) days of the event.

LOSS OF COVERAGE

It is important to note that coverage will end in the event an employee loses his job with the State of South Carolina, dies, quits, goes from full-time to part-time, or loses eligibility for coverage because of divorce or separation. In this event COBRA may be an option. In order to be eligible for COBRA, the plan administrator and the PEBA benefits office must be notified within sixty (60) days after a qualifying event or the date of coverage would have been lost because of the

qualifying event, whichever is later. The COBRA premium payment and COBRA NOE must also be submitted. However, the premium payment must be paid within 45 days of the date coverage was elected. If this is not done, then the continuation of coverage under COBRA will be lost.

In the event that coverage under COBRA ends and the employee is not eligible for other coverage under a group plan and certain conditions are met, the employee may be eligible under the South Carolina Health Insurance pool. For more information call 1-800-868-2500 or 803-788-0500.

DEATH

When an employee dies, an ex-spouse and child/ren that are covered under PEBA are eligible as survivors for a one (1) year waiver of health insurance premiums. This would also apply to most retirees who pass away. After the one (1) year waiver of premiums, then the previous premium amount will remain in effect unless both spouses are covered under a plan with the State. These waivers only apply to the health plan. Both the health and dental premiums are waived if the covered employee was killed in the line of duty while working.

SPECIAL ELIGIBILITY SITUATIONS

Certain events such as adoption, marriage, birth, death, and loss of coverage permit changes in health insurance coverage provided proper steps are taken within thirty-one (31) days of the event. Practitioners should be aware of this thirty-one (31) day window and make sure their client contacts the benefits administrator and PEBA immediately after such event.

GENERAL INFORMATION

In PEBA, there is a medical insurance plan, dental plan, vision plan, life insurance plan, disability plan, long term care insurance plan, and Medicare Supplement Plan available. However, an employee may not be taking advantage of all or any of the plans. Therefore, the practitioner should confirm eligibility of coverage. Basic life and disability is provided for free to employees who are enrolled in the health plan.

PRACTITIONERS NOTE: Since basic life and basic long-term disability is provided for free to eligible employees, the practitioner may want to make provisions in an order who the beneficiary of the life insurance policy should be when death occurs.

PRIVACY AND HIPAA

If a participant in litigation needs information about another's insurance plan, such information is protected under the Health Insurance Portability and Accountability Act (HIPAA). There is an Authorized Representative form available on the PEBA Insurance Benefits website under "forms". You must go to "HIPAA" and then select "Authorized Representative Form." Send this to opposing counsel in order for it to be completed so you may forward it to PEBA. If you have any questions about HIPAA, you may contact the following:

Privacy Officer

South Carolina Public Employee Benefit Authority

Insurance Benefits

1201 Main St. Suite 300

Columbia, SC 29201

Ph.: (803) 734-0678

Fax: (803) 726-9877

Email: privacyofficer@eip.sc.gov

Disclaimer

The 2013 Domestic Attorney's Handbook to the South Carolina Employee Health Insurance Program is a practitioner's guide to the health insurance benefits provided pursuant to the South Carolina Public Employee Benefit Authority (PEBA). It is only intended to bring to the attention of practicing domestic attorneys the potential issues and pitfalls that they may encounter when representing clients who may be eligible for benefits under PEBA. This handbook is not intended to discuss or to represent the specific terms of coverage that the specific contract for insurance may provide. Reference is craved to the specific contracts that contain the descriptions of the health insurance plans and benefits. Any terms and conditions under the contract will govern the benefits available to an employee and/or spouse. These documents can be obtained from the South Carolina Employee Benefit Authority (PEBA), 202 Arbor Lake Drive, Columbia, SC, 29223 or PO Box 11661, Columbia, SC 29211; (803) 734-0678 or (888)-260-9430 website: www.eip.sc.gov. This handbook should not be relied upon as explanation of the Affordable Care Act or the Early Retiree Reinsurance Program. Also, benefits are subject to change and it is urged to contact the benefits administrator for specific questions about coverage, deductibles, premiums and any other benefits under the plan. This document is not an official PEBA document and is not

distributed, nor endorsed by the State of South Carolina or PEBA. It is for educational purposes only and should not be relied upon for legal advice.

If you have any question or comments about anything in this guide, please feel free to email me: rdburney@turnerandburney.com.

[1] When the term “health insurance” is used in this guide, the term is referring to medical, dental, and vision insurance unless stated otherwise.

[2] For insurance purposes permanent, part-time teachers are considered employees. General Assembly Members; judges; elected council members of a participating county or municipality who also participate in the PEPA Retirement Benefits program; clerical and administrative employees of the South Carolina General Assembly; and clerical and administrative employees of judges in the state court system are also considered employees under the program.

[3] For simplicity when this guide refers to “employee” it is also referring to “retirees”, unless otherwise stated, even though retiree may not be mentioned specifically.

[4] Thirty-one (31) days from an event is an important timeframe when dealing with PEBA and changes in coverage. Make sure the plan administrator is notified within thirty-one (31) days of the court order or the loss of other insurance coverage.

[5] Throughout this guide, you will see references to “plan administrator”. Each State employer may have a certain person designated as a plan administrator. However, PEBA is considered THE Plan Administrator for the benefits program. The plan administrator must be notified of changes of coverage. Although, it is probably sufficient to notify only the employee’s intra-office plan administrator, it is best practice to notify PEBA, as well, of any changes.

[6] Only the recorded complaint or recorded court order will be accepted.

[7] All forms mentioned in The 2013 Domestic Attorney’s Handbook to the South Carolina Employee Health Insurance Program can be found at www.ejp.sc.gov. Click the “Forms” button on the top, left side of the page.