



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

April 24, 1997

The Honorable Fred Hill
Chair, Committee on Urban Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 97-040

Re: Continuation of health insurance benefits
for survivors of deceased public safety officers
(ID# 39403)

Dear Representative Hill:

You ask several questions regarding chapter 615, subchapter D of the Texas Government Code. Subchapter D entitles the surviving spouse and dependents of certain public safety officers to purchase continued health insurance benefits from the officer's employer if the officer is killed in the line of duty. These benefits are available to the survivors of both state and local public safety officers.¹

Your first question involves the role of the Employees Retirement System of Texas ("ERS") in determining a claimant's right to receive continued health insurance benefits when the deceased public officer was an employee of a local governmental entity. Chapter 615 provides that it is to be administered by the ERS board of trustees.² The ERS's review of claims for benefits typically includes an investigation into the cause of the officer's death and an examination of the relationship between the claimant and the officer to determine whether the claimant is in fact an eligible survivor.³

Prior to 1993, survivor death benefits were limited to financial assistance in the form of lump-sum or periodic cash payments, pursuant to Act of April 13, 1967, 60th Leg., R.S., ch. 86, 1967 Tex. Gen. Laws 163, 163 ("the act").⁴ In 1993, the act was amended to entitle survivors to the additional

¹The covered employees include police officers, fire fighters, sheriffs and marshals, Department of Public Safety rangers, and many other state and local public safety officers. See Gov't Code §§ 615.071, .003.

²Section 615.002 provides: "The board of trustees of the Employees Retirement System of Texas shall administer this chapter under rules adopted by the board." ERS rules for the administration of chapter 615 are found in Texas Administrative Code title 34, chapter 75.

³See Gov't Code §§ 615.041, .042; 34 T.A.C. § 75.1.

⁴The act was codified in V.T.C.S. article 6228f, which was repealed in 1995 and replaced without substantive change by Government Code section 615, subchapters A, B, and C.

benefit of continued health insurance.⁵ Like cash assistance benefits, insurance benefits are available to the survivors of both state and local officers. However, while cash assistance benefits are paid with state funds upon determination by the ERS of a valid claim, insurance benefits are paid by the officer's employer, whether state or local. You observe that "[o]ne would initially assume that affected local entities would make the decisions about their own employees."

You ask: "Is a local government entity bound by what it considers an improper determination by the State under Section 615.042,⁶ or is it obligated to review the facts and make its own decision?" We conclude that a local governmental entity must make health insurance benefits available to a survivor if the ERS determines that the survivor has a valid claim for cash benefits under chapter 615.

Chapter 615 is a 1995 codification of repealed V.T.C.S. articles 6228f, 6228f.1, and 6228f.2.⁷ The codification was made without substantive change to the statutes.⁸ Former V.T.C.S. article 6228f.1 provided:

When a person to whom this article applies suffers violent death in the course of performance of duty and it is determined under Chapter 86, Acts of the 60th Legislature, Regular Session, 1967 (Article 6228f, Vernon's Texas Civil Statutes), that a claim under that Act is valid and justifies payment under that Act, then in addition to any benefits payable by the state under that Act, an eligible survivor is entitled to purchase continued health insurance benefits from the political subdivision that employed the decedent as provided by this section.⁹

Under article 6228f.1, then, an eligible survivor was entitled to purchase insurance benefits from a local employer upon a determination by the ERS that the survivor was entitled to cash assistance under article 6228f.

Because article 6228f.1 was codified as part of a nonsubstantive statutory revision, we must construe current chapter 615 consistent with the former statute. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 654-55 (Tex. 1989). We conclude, therefore, that if the ERS determines that a

⁵Act of May 29, 1993, 73d Leg., R.S. 1993, ch. 572, §§ 3, 6, 1993 Tex. Gen. Laws 2149, 2151-53. The 1993 amendment also entitles an officer's family to receive the officer's gun, badge, and uniform free of charge. *Id.*

⁶Section 615.042 provides: "The board of trustees of the Employees Retirement System of Texas shall notify the comptroller of the board's determination that a claim under this chapter is valid and justifies payment."

⁷See Act of April 25, 1995, 74th Leg., R.S., ch. 76, §§ 5.12, .13, 1995 Tex. Gen. Laws 458, 474-75.

⁸*Id.* § 1.01 (codifying "without substantive change" various statutes that were omitted from enacted codes).

⁹V.T.C.S. art. 6228f.1, § 4(a), *repealed by* Act of April 25, 1995, 74th Leg., R.S., 1995 Tex. Gen. Laws 458, 458 (now codified at Gov't Code, ch. 615, subch. D).

survivor of an officer of a local governmental entity is eligible for the state cash death benefit, the local entity must offer continued health insurance benefits to the survivor.

Next, you ask: "May a local governmental entity make a conditional determination of eligibility within the required 10 days, then reverse it when all the facts are known?" Chapter 615 requires an employer to notify an eligible survivor of the survivor's rights to insurance benefits not later than the tenth day after the date of the decedent's death. You tell us that it often takes far longer than ten days for the ERS to investigate the facts surrounding the officer's death and determine whether the survivors are eligible to receive benefits. However, because of the significant financial loss that may result from being uninsured, we believe the legislature intended the survivors to be able to purchase health insurance from the employer as quickly as possible following the officer's death. We conclude that a local governmental entity may conditionally provide health insurance benefits to a survivor. If the ERS later determines that the survivor is ineligible for benefits, the benefits may be discontinued.

Your final question relates to the amount an eligible survivor is to be charged for continued health insurance. You state that many employers charge a rate to employees that is different from the rate charged to spouses and dependents. You ask: "Is the rate a local governmental entity is to charge a survivor for the coverage based upon the rate being charged for dependents, or is the entity supposed to treat the survivor as an active employee for this purpose?"

While the statute does not directly answer this question, it implies that the legislature intended to entitle the survivor to purchase any coverage that the survivor, not the officer, purchased or could have purchased before the officer's death. Chapter 615 allows a survivor to continue insurance coverage "at any level of benefits currently offered by the employing entity to *dependents* of an active employee."¹⁰ The statute also provides that it does not "affect the definition of a dependent or the eligibility requirements for a dependent under a plan."¹¹ Furthermore, testimony before the Senate State Affairs Committee on the enacting legislation in 1993 indicates that supporters of the legislation did not intend the continued survivor insurance benefits to cost an employer any more than the benefits cost when the officer was living.¹² We conclude, therefore, that a local governmental entity may charge an eligible survivor the insurance coverage rate charged to dependents of current employees, and is not obligated to charge the rate that would have been charged to the employee.

¹⁰Gov't Code § 615.076(a) (emphasis added).

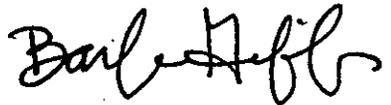
¹¹*Id.* § 615.078.

¹²See Hearings on S.B. 97 Before the Senate State Affairs Comm., 73d Leg., R.S. (Feb. 1, 1993) (transcript available from Senate Staff Services Office).

S U M M A R Y

If the Employees Retirement System of Texas determines that a survivor of a deceased public safety officer is entitled to receive cash assistance benefits pursuant to Government Code chapter 615, the survivor is entitled to purchase continued health benefits from the local governmental entity that employed the officer. A local governmental entity may conditionally provide health insurance benefits to a survivor. If the ERS later determines that the survivor is ineligible for benefits, the benefits may be discontinued. A local governmental entity may charge an eligible survivor the insurance coverage rate charged to dependents of current employees.

Yours very truly,



Barbara Griffin
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Opinion Committee