



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 24, 2018

The Honorable Wiley B. McAfee  
District Attorney  
33rd and 424th Judicial Districts  
1701 East Polk Street  
Burnet, Texas 78611

Opinion No. KP-0214

Re: Whether subchapter D, chapter 615, of the Government Code requires municipalities to allow survivors of a part-time public safety employee to purchase health insurance benefits when the employee was not eligible for health insurance benefits at the time of the employee's death (RQ-0216-KP)

Dear Mr. McAfee:

You ask whether subchapter D, chapter 615, of the Government Code requires municipalities to allow survivors of a part-time public safety employee to purchase health insurance benefits through the municipality when the employee was not eligible for the benefits at the time of the employee's death.<sup>1</sup> You explain that the City of Burnet ("City") employed a part-time firefighter/EMT who died in the line of duty. Request Letter at 1. Under the City's personnel policy manual, part-time employees are not eligible for medical insurance through the City. *See id.*; *see also* Attachment at 4.01, 7.01. Nor are part-time employees' dependents eligible for medical care under the City's health care plan. *See* Request Letter at 1; *see also* Attachment at 4.01, 7.01.

You tell us the firefighter's widow successfully filed for the statutory cash death benefit under Chapter 615 of the Texas Government Code. *See* Request Letter at 1 ("Those benefits were granted by the Employees Retirement System of Texas (ERS) on October 17, 2016."); *see also* TEX. GOV'T CODE §§ 615.021-.045 (governing payments to eligible survivors). You also tell us that ERS, unaware of the firefighter's part-time status with the City, "advised the widow to enroll in health, dental and/or vision coverage due to the decedent's employment with the City." Request Letter at 1-2. Lastly, you state that the City, up to the current date of your request letter, has allowed the widow to "purchase insurance for herself and her children at the same rate that full-time employees pay for dependent coverage." *Id.* at 2. In light of questions following a 2010

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<sup>1</sup>*See* Letter & Attachment from Honorable Wiley B. McAfee, Dist. Att'y, 33rd & 424th Judicial Dist., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Mar. 30, 2018), <https://texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter" and "Attachment," respectively) (Attachment on file with the Op. Comm.).

attorney general opinion and 2011 legislative amendments, you ask for an opinion clarifying a municipality's obligation under Government Code, chapter 615, subchapter D.

Subchapter D, chapter 615, of the Government Code governs continuing health insurance coverage for eligible surviving family members of certain law enforcement officers and firefighters. *See* TEX. GOV'T CODE §§ 615.071–.080. Chapter 615 identifies the positions that the deceased employee must have held for his or her surviving family members to be eligible for benefits under the chapter. *See id.* § 615.003. Section 615.071 then identifies those survivors to whom subchapter D may apply. *See id.* § 615.071. Section 615.072 defines the eligibility requirements for benefits under subchapter D, providing that:

A survivor of an individual listed under Section 615.071 is eligible for the health insurance benefits provided under this subchapter if:

(1) the listed individual died as a result of a personal injury sustained in the line of duty in the individual's position as described by section 615.071; and

(2) the survivor is:

(A) the surviving spouse of the listed individual; or

(B) a dependent of the listed individual.

*Id.* § 615.072(a); *see also id.* § 615.021(e) (defining “personal injury” and “line of duty”). Subsection 615.073(b) then provides that “[a]n eligible surviving spouse of a deceased individual listed in Section 615.071 who was employed by a political subdivision of the state is entitled to purchase or continue to purchase health insurance benefits from the political subdivision that employed the deceased individual.” *Id.* § 615.073(b); *see also id.* § 615.074(b) (providing same for surviving dependents).

The primary objective in statutory construction is to effectuate the Legislature's intent. *See Colorado Cty. v. Staff*, 510 S.W.3d 435, 444 (Tex. 2017). Texas courts find that intent “first and foremost in the statutory text.” *Id.* (quotation marks omitted). Where the text is clear, it is determinative. *Ochsner v. Ochsner*, 517 S.W.3d 717, 720 (Tex. 2016).

We consider subsections 615.072 and 615.073 to address your question. Under subsection 615.072(a), the necessary factors for a survivor to be eligible under subchapter D are the deceased employee's position and cause of death, and the survivor's relationship with the deceased employee. *See* TEX. GOV'T CODE § 615.072(a). Subsection 615.072(a) does not refer to the deceased employee's eligibility for health insurance benefits from the employing political subdivision at the time of death as a factor for the surviving family members' eligibility under subchapter D. *See generally id.* Rather, if eligible under subsection 615.072(a), the surviving spouse is “entitled to purchase or continue to purchase health insurance benefits from the political subdivision.” *Id.* § 615.073 (emphasis added); *see also id.* § 615.074 (authorizing same benefit to deceased employee's dependent). To “purchase” means to “acquire (something) by paying for it; buy.” NEW OXFORD AMERICAN DICTIONARY 1417 (3d ed. 2010). To “continue” means to “persist

in an activity or process.” *Id.* at 376. Thus, as distinguished from “continue to purchase,” which refers to a surviving spouse who has been purchasing health insurance benefits, the use of the term “to purchase” suggests the surviving spouse may commence purchasing the health insurance. In expressly providing that an eligible surviving spouse “is entitled to purchase . . . health insurance benefits,” subsection 615.073(b)’s plain language entitles that spouse to begin buying health insurance benefits. As section 615.073(b) is unqualified in its entitlement to a surviving spouse, its plain language answers your question in the affirmative. *See id.* § 615.073(b); *see also TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 75 (Tex. 2016) (construing unambiguous statute “according to its plain language as informed by the statutory context without resorting to canons of construction and extrinsic aids”).

Subsubsection 615.072(b-1) does not provide otherwise. *See* Request Letter at 2. The Legislature, along with changing the language in subsection 615.073(b), added subsection 615.072(b-1) in response to a 2010 attorney general opinion, Opinion GA-0822. *See* Tex. Att’y Gen. Op. No. GA-0822 (2010). The opinion involved a specific instance of a surviving spouse who had been eligible for coverage under the deceased employee’s health insurance plan but had not yet elected coverage. *See id.* at 1. As considered in Opinion GA-0822, former section 615.073 entitled a surviving spouse to “purchase continued health insurance benefits.” *Id.* at 2. Opinion GA-0822 determined that “continued” was susceptible of two meanings and declined to predict how a court would interpret the provision. *See id.* Opinion GA-0822 also expressly invited the Legislature to clarify the meaning of section 615.073. *See id.* In the next session, the Legislature responded and added subsection 615.072(b-1), which states that a “survivor . . . who would have been eligible for health insurance benefits during the life of the individual may not be denied health insurance benefits on the ground that the survivor was enrolled in group health insurance with another employer as of the date of the individual’s death.” Act of April 19, 2011, 82d Leg., R.S., ch. 50, § 4, 2011 Tex. Gen. Laws 78, 78. By replacing the language of subsection 615.073(b) from “to purchase continued health insurance benefits” with “to purchase . . . health insurance benefits,” the Legislature signaled its intent to expand the scope of subsection (b). Act of April 19, 2011, 82d Leg., R.S., ch. 50, § 5, 2011 Tex. Gen. Laws 78, 79; *see Indep. Life. Ins. Co. v. Work*, 77 S.W.2d 1036, 1039 (Tex. 1934) (“The rule is elementary that we must give some effect to changes in the words of legislative acts.”). While the language of subsection 615.072(b-1) addresses and clarifies the specific circumstances in Opinion GA-0822—and reveals an intent to ensure benefits for a surviving spouse who was eligible but not yet covered—it does not reflect any intent to impose an additional requirement that a surviving spouse have been eligible for the municipality’s health insurance benefits to now be “entitled to purchase” those benefits under subsection 615.073(b). For us to so construe subsection 615.072(b-1) would negate subsection 615.073(b)’s entitlement to the surviving spouse “to purchase” health insurance benefits. *See Tex. Dep’t of Safety v. J.H.J.*, 274 S.W.3d 803, 808 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (“[W]e should not assign a meaning to one statutory provision that would be inconsistent with other provisions of the same act even if the provision, standing alone, might be susceptible to such a construction.”).

For these reasons, provided the deceased employee was one to whom subchapter D, chapter 615 of the Government Code applies, a court would likely conclude that subsection 615.073(b) entitles a surviving spouse of a part-time municipal employee who was not eligible for municipal health insurance at the time of death to purchase health insurance benefits from the municipality.<sup>2</sup>

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<sup>2</sup>A court would likely make the same conclusion about any surviving dependents under subsection 615.074(b).

S U M M A R Y

If a surviving spouse meets the eligibility requirements under subsection 615.072(a) of the Government Code, a court would likely conclude the spouse is entitled to purchase health insurance benefits from the municipality that employed a part-time safety employee pursuant to subsection 615.073(b), regardless of whether the employee was eligible for the benefits prior to death.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
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