

Health Insurance Continuation Coverage Under COBRA

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Health insurance helps to protect individuals and families against financial loss. Having health insurance also promotes access to regular health care. Most Americans with private health insurance are covered through an employer, or through the employer of a family member. The Census Bureau estimates that in 2018, 55.1% of the United States population had health insurance through an employer.

When an employee is terminated, his or her employer-sponsored health insurance usually ends within 30 to 60 days. If that health insurance is family coverage, then a worker's family members would also lose access to this coverage. This same issue may also be faced by families that experience a reduction in hours in the workplace, the death of a worker, or a divorce.

In 1985, Congress passed legislation to provide certain individuals who lose access to employer-sponsored health insurance coverage with temporary access to continue such coverage. Under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272), an employer with 20 or more employees who provided health insurance benefits must provide qualified employees and their families the option of continuing their coverage under the employer's group health insurance plan in the case of certain events. Employers who fail to provide the continued health insurance option are subject to penalties.

COBRA coverage usually lasts for 18 months, but it can be extended up to a total of 36 months, depending on the nature of the triggering event. Those who take up their COBRA benefits are required to pay up to 100% of the premium, plus an additional 2% for the administrative costs incurred. For context, in 2019, the average annual premium for employer-sponsored health insurance (which includes insurance sponsored by employers not subject to COBRA continuation coverage requirements) was \$7,188 for single coverage and \$20,576 for family coverage.

Employees and family members are generally eligible for COBRA continuation coverage if the employee is voluntarily or involuntarily terminated or has a reduction in hours and as a result of either event, loses coverage. In addition, family members may also be eligible for COBRA continuation coverage as a result of other qualifying events. For example, spouses and dependent children can also qualify for COBRA benefits in the event of divorce or the death of the family member with employer-sponsored health coverage.

This report provides a simplified explanation of who qualifies for COBRA continuation coverage, the nature of COBRA continuation coverage, and corresponding employer and employee responsibilities. It also incorporates descriptions of the temporary relief that was provided on May 4, 2020, by the Department of Labor Employee Benefits Security Administration and Internal Revenue Service in response to the Coronavirus Disease 2019 (COVID-19) pandemic (as it pertains to COBRA continuation coverage). This relief extends various COBRA time frames and was intended to help minimize the possibility that individuals would lose health insurance because they failed to comply with certain COBRA time frames during the COVID-19 pandemic.

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COBRA Coverage

Most individuals with private group health insurance are covered through an employer, or through the employer of a family member. In 2018, about 57% of private and nonfederal public employers offered health insurance coverage to their full-time employees, with most of these employers offering the option of family coverage as well.¹ The Census Bureau estimates that in 2018, 55.1% of the United States civilian, noninstitutionalized population (including employees, their spouses, and their dependents) had their insurance through an employer.² When workers lose their jobs, they can also lose their health insurance. If that health insurance is family coverage, then a worker's family members can also become uninsured.

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272) requires most private sector employers with more than 20 employees who offer health insurance to continue coverage for their employees under certain circumstances.³ The law affects private sector employer group health plans through amendments to the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code.⁴

Before enactment of COBRA, if an employee's job was (voluntarily or involuntarily) terminated, the insurance offered by the employer also ceased, usually within 30 to 60 days.⁵ Although some employers offered the option of buying into the group plan post-termination, there was no certainty of that option. In 1985, few states had laws requiring that insurance policies sold in their states include a continuation of coverage option for terminated workers. However, self-insured employers (employers that assume the risk of the health care costs of their employees rather than using private insurers) were not regulated by these state-mandated benefit laws; self-insured plans were regulated at the federal level under ERISA.

As such, health insurance coverage for these affected workers and their families was not consistently available. Upon termination, these unemployed individuals likely would have been able to obtain health insurance coverage only from one of the following options (if eligible): a spouse's employer, the individual market (which at the time allowed for coverage denials and medical underwriting), or Medicaid. If the individual did not (or was unable to) enroll in any of these coverages, the individual would have gone uninsured. Congress enacted COBRA to expand access to coverage for at least those people who become uninsured as a result of changes in their employment or family status.

¹ Kaiser Family Foundation and Health Research Education Trust, *Employer Health Benefits 2018 Annual Survey*, October 2018, at <http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018>.

² Edward R. Berchick, Jessica C. Barnett, and Rachel D. Upton, *Health Insurance Coverage in the United States: 2018*, U.S. Census Bureau, November 2019, at <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>.

³ Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 also created similar continuation coverage requirements on state and local governments. These requirements are included in the Public Health Service Act and are administered by the Department of Health and Human Services. This report focuses on the COBRA continuation coverage requirements as they pertain to private-sector employers.

⁴ As such, the regulations for COBRA are written by the Department of Labor (DOL) and the Internal Revenue Service (IRS). DOL has the authority to interpret COBRA reporting and disclosure provisions, and the Department of Treasury has the authority to interpret the coverage and tax sanction provisions. Department of the Treasury, IRS, "Continuation Coverage Requirements Applicable to Group Health Plans," 64 *Federal Register* 5160-5188, February 3, 1999.

⁵ Voluntary terminations include retirement, resignation, and failure to return to work after a leave of absence. Involuntary terminations include layoffs and firings.

Today, COBRA continuation coverage still represents one potential coverage option for qualified individuals who are terminated or experience another qualifying event—although more recent policy changes to the individual market (i.e., guaranteed issue) no longer make COBRA continuation coverage the *only* health insurance option available to certain individuals (i.e., those who would not have been eligible for Medicaid or a spouse’s employer-sponsored coverage and would otherwise have been denied coverage in the individual market).⁶ Although employers are allowed to charge 102% of the group plan premium for COBRA coverage, COBRA continuation coverage may still be less expensive than similar coverage available in the individual insurance market when individuals are not eligible for subsidies through the health insurance exchanges.⁷

The rest of this report generally explains who qualifies for COBRA continuation coverage, the nature of COBRA continuation coverage, and corresponding employer and employee responsibilities. It also incorporates descriptions of the temporary relief that was provided on May 4, 2020, by the Department of Labor (DOL) Employee Benefits Security Administration and Internal Revenue Service (IRS) in response to the Coronavirus Disease 2019 (COVID-19) pandemic (as it pertains to COBRA continuation coverage).⁸ This relief extends various COBRA time frames and was intended to help minimize the possibility that individuals would lose health insurance because they failed to comply with certain COBRA time frames during the COVID-19 pandemic. The extensions included in the temporary relief are discussed in the “Notice Requirements,” “Election of Coverage,” and “Paying for COBRA” sections.

More detailed information is available from DOL’s Continuation of Health Coverage (COBRA), at <https://www.dol.gov/general/topic/health-plans/cobra>.

General Requirements

Under COBRA, most employers who provide health insurance benefits must offer the option of continued health insurance coverage at group rates to qualified employees and their families who are faced with loss of coverage due to certain events. Coverage generally lasts 18 months but, depending on the circumstances, can last for longer periods. COBRA requirements apply to fully-insured and self-insured firms. An employer must comply with COBRA even if it does not contribute to the health plan; it needs only maintain such a plan to come under the statute’s continuation requirements.⁹

⁶ For a discussion of health insurance options available for those who experience a loss in employment, see CRS In Focus IF11523, *Health Insurance Options Following Loss of Employment*.

⁷ Individuals who enroll in individual market coverage through a health insurance exchange and meet income and other eligibility criteria may receive financial assistance through a federal tax credit and cost-sharing subsidies. For more information on the financial assistance available through the exchanges, see CRS Report R44425, *Health Insurance Premium Tax Credits and Cost-Sharing Subsidies*.

⁸ IRS and Employee Benefits Security Administration, “Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak,” 85 *Federal Register* 26351-26355, May 4, 2020. Hereinafter, 85 *Federal Register* 26351.

⁹ On February 3, 1999, the IRS published final rules (64 *Federal Register* 5160-5188), effective January 1, 2000, defining COBRA coverage requirements. Final rules addressing COBRA issues applying to business reorganizations, bankruptcy, and COBRA’s interaction with the Family and Medical Leave Act were issued on January 10, 2001 (66 *Federal Register* 1843-1859). Final rules addressing notification requirements were issued on May 26, 2004 (69 *Federal Register* 30083-30112).

Covered Employers

COBRA covers all employers, with the following exceptions:

- **Small employers.**¹⁰ Employers with fewer than 20 employees are not covered under COBRA.¹¹ Most states have attempted to address this issue through “mini-COBRA” laws, which require that continuation coverage be offered to employees in smaller firms. However, in some states, the continuation coverage may be offered for a shorter period or have different requirements than federal COBRA requirements.¹²
- **Church plans.**¹³
- **Federal, state, and local governments.** Although federal employees are not covered under COBRA, they have been entitled to temporary continuation of coverage (TCC) under the Federal Employees Health Benefits Program (FEHB) since 1990.¹⁴ Continuation coverage for state and local employees is mandated under the Public Health Service Act with provisions very similar to COBRA’s protections.¹⁵

Qualified Beneficiaries

In general, a qualified beneficiary is

¹⁰ According to the Census Bureau’s *Statistics of U.S. Business*, there were approximately 5.3 million firms with fewer than 20 employees in 2017. In total, these entities employed 21.1 million people, or about 16% of employees covered in the survey. U.S. Census Bureau, “2017 SUSB Annual Data Tables by Establishment Industry,” at <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

¹¹ An employer is considered to meet the small employer exception during a calendar year if on at least 50% of its typical business days during the preceding calendar year, it had fewer than 20 employees. In making this determination, employers consider full-time and part-time employees. Part-time employees are counted as fractions of full-time employees. Self-employed individuals, independent contractors, and directors (in the case of a corporation) are not taken into account in this determination—although employers may need to offer such individuals COBRA continuation coverage (if subject to COBRA requirements).

¹² The data associated with this statement are from 2013, and states may have changed their laws since this sourced study was published. CRS was unable to identify more recent data on this topic. Kaiser Family Foundation, *Expanded COBRA Continuation Coverage for Small Firm Employees*, at <https://www.kff.org/private-insurance/state-indicator/expanded-cobra-continuation-coverage-for-small-firm-employees/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹³ Church plans are plans that are “established and maintained ... by a church or by a convention or association of churches.” See 29 U.S.C. §1002(33).

¹⁴ Some differences exist between COBRA and FEHB TCC. For example, there are different eligibility requirements under FEHB, there is no extended coverage for disabled individuals, and there are no bankruptcy provisions. However, the length of coverage and qualifying events under both plans are the same. For more information, see *Termination, Conversion and Temporary Continuation of Coverage*, at <https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/termination-conversion-and-temporary-continuation-of-coverage/>.

¹⁵ See 42 U.S.C. §300bb-1 et seq.

- an employee¹⁶ covered under the group health plan who loses coverage due to a voluntary or involuntary¹⁷ termination of employment (for reasons other than gross misconduct) or a reduction in hours;
- a retiree who loses retiree health insurance benefits due to the former employer's bankruptcy under Chapter 11;
- a spouse or dependent child of the covered employee (or retiree) who, on the day before the "qualifying event" (see below), was covered under the employer's group health plan; or
- any child born to or placed for adoption with a covered employee during the period of COBRA coverage.

When considering the rules around COBRA coverage (including the definitions of a qualified beneficiary), a qualified beneficiary would not be

- an individual who declined employer-sponsored benefits;
- a worker (including an independent contractor) who did not qualify for employer-sponsored benefits;
- an employee at an employer, regardless of size, that does not offer group health insurance;
- family members of an employee that works for an employer that does not offer a family option;
- an employee at an employer with fewer than 20 employees (because such employer is exempt from federal COBRA requirements); or
- an employee of an employer that declares bankruptcy under Chapter 7 or simply discontinues operation.

Qualifying Events

Circumstances that trigger COBRA coverage are known as "qualifying events." A qualifying event must cause an individual to lose health insurance coverage. Losing coverage means ceasing to be covered under the same terms and conditions as those available immediately before the event. For example, if an employee is laid off or changes to part-time status resulting in a loss of health insurance benefits, these are qualifying events.

The loss in coverage does not need to occur immediately after the event, but it needs to occur before the end of the maximum period in which COBRA continuation coverage must be made available (see "Duration of Coverage"). For example, an employee may have a reduction in hours on March 1, 2020, that causes the employee to lose coverage on July 1, 2020. This employee would still be considered to experience a qualifying event.

Events that trigger COBRA continuation coverage include the following:

- termination (for reasons other than gross misconduct), and

¹⁶ In this context, the term *employee* includes self-employed individuals, independent contractors (and their employees and independent contractors), and directors (in the case of a corporation). As such, these individuals may be eligible for COBRA continuation coverage if their relationship to the employer makes them eligible to be covered under the employer's group health plan.

¹⁷ Voluntary reasons include retirement, resignation, and failure to return to work after a leave of absence. Involuntary reasons include layoffs, firings, and the employer's bankruptcy under Chapter 11 of Title 11 of the *U.S. Code*. Strikes and walkouts might also trigger COBRA coverage if they result in a loss of health insurance coverage.

- a reduction in hours of employment.

Spouses and dependent children can also experience the following qualifying events leading to their loss of health insurance coverage:

- the death of the covered employee,
- divorce or legal separation from the employee,
- the employee becomes entitled to Medicare, and
- the end of a child's dependency under a parent's health insurance policy.¹⁸

Under the following circumstances, a covered employer must offer a retiring employee access either to COBRA continuation coverage or to a retiree plan that satisfies COBRA's requirements for benefits, duration, and premium:

- If a covered employer does not offer a retiree health plan, the retiring employee must be offered COBRA coverage.
- If the employer offers a retiree health plan but it is different from the coverage the employee had immediately before retirement, the employer must offer the option of COBRA coverage in addition to the offer of the alternative retiree plan. If the retiring employee opts for the alternative coverage and declines COBRA coverage, then she or he is no longer eligible for COBRA.
- If the employer's retiree health plan satisfies COBRA's requirements for benefits, premium, and duration, the employer is not required to offer a COBRA option when the employee retires, and the coverage provided by the retiree plan can be counted against the maximum COBRA coverage period that applies to the retiree, spouse, and dependent children. If the employer terminates the retiree plan before the maximum coverage period has expired, COBRA coverage must be offered for the remainder of the period.
- The only other access a retiree has to COBRA coverage is when a former employer terminates the retiree health plan under Chapter 11 bankruptcy reorganization. This option would be available only to those retirees who are receiving retiree health insurance. In this case, the coverage can continue until the death of the retiree. The retiree's spouse and dependent children may purchase COBRA coverage from the former employer for 36 months after the retiree's death.

The Nature of COBRA Coverage

In general, a qualified beneficiary needs to be given only an opportunity to continue the coverage that the qualified beneficiary was receiving immediately before the qualify event. The continuation coverage must be identical to that provided to "similarly situated non-COBRA beneficiaries." The term *similarly situated* is intended to ensure that beneficiaries have access to the same options as those who have not experienced a qualifying event. For example, if the employer offers an open season for non-COBRA beneficiaries to change their health plan coverage, the COBRA beneficiary must also be able to take advantage of the open season. By the

¹⁸ The end of a child's dependency under a parent's health insurance policy is considered a qualifying event for dependent children only. If an employer offers dependent coverage to its employees, the plan must make such coverage available to a child until the child turns 26. See 42 U.S.C. §300gg-14.

same token, COBRA continuation coverage can be terminated if an employer terminates health insurance coverage for all employees.

There are some exceptions to this rule. If a COBRA-covered beneficiary receiving coverage through a region-specific plan (such as a managed care organization) moves out of that area, the employer is required to provide the employee coverage in the new area if this can be done under one of the employer's existing plans. If the employee's same coverage would not be available in the new area, but the employer maintains another plan for employees who are not similarly situated to the beneficiary (such as a plan offered to another employment group within the firm) and that other plan would be available in the new area, then that alternative coverage must be offered to the beneficiary. If the only coverage offered by the employer is not available in the new area, the employer is not obliged to offer any other coverage to the relocating beneficiary.

Duration of Coverage

The duration of COBRA coverage can vary, depending on the qualifying event.

- In general, when a covered employee experiences a termination or reduction in hours of employment, COBRA coverage for the employee and the employee's spouse and dependent children may continue for 18 months.
- Retirees who lose retiree health insurance benefits, due to the bankruptcy (a reorganization under Chapter 11) of their former employer, may elect COBRA coverage that can continue until their death. The spouse and dependent children of the retiree may continue the coverage for an additional 36 months after the death of the retiree.
- For all the other qualifying events listed above (death of employee, divorce or legal separation from employee, employee becoming entitled to Medicare, the end of a child's dependent status under the parents' health policy), the coverage for the qualified beneficiaries may continue for 36 months.

Qualified beneficiaries entitled to 18 months of COBRA continuation coverage (i.e., as a result of a termination or reduction in hours) may receive an extension of such coverage if either of two situations occur.

First, if qualified beneficiaries experience a second qualifying event (e.g., death of a covered employee, divorce or legal separation from employee) during an 18-month COBRA coverage period, the qualified beneficiary may continue COBRA coverage for a total of 36 months if the second event would have caused a loss in coverage (absent the first event). In essence, the qualified beneficiary would be eligible for an 18-month extension.

Second, COBRA continuation coverage may be extended beyond 18 months for qualified beneficiaries who become disabled at any time during the beginning of the COBRA continuation coverage period. If the Social Security Administration (SSA) makes a determination that the date of a qualified beneficiary's onset of disability occurred during the first 60 days of COBRA coverage or earlier, the employee and the employee's spouse and dependents are eligible for an additional 11 months of continuation coverage. This is a total of 29 months from the date of the qualifying event (which must have been a termination or reduction in hours of employment). This provision was designed to provide a source of coverage while individuals wait for Medicare

coverage to begin.¹⁹ (See “Paying for COBRA” regarding COBRA premiums during these additional 11 months.)

Employers are permitted to provide longer periods of COBRA coverage and under some conditions, COBRA coverage can end earlier than the full term. Although coverage must begin on the date of the qualifying event, it can end on the earliest of the following:

- the first day for which timely payment of the premium is not made (payment is timely if it is made within 30 days of the payment due date and payment cannot be required before 45 days after the date of election (see “Paying for COBRA”);
- the date on which the employer ceases to maintain any group health plan;²⁰
- the first day after the qualified beneficiary becomes actually covered (and not just eligible to be covered) under another employer’s group health plan, unless the new plan excludes coverage for a preexisting condition;²¹
- the date the qualified beneficiary is entitled to Medicare benefits; or
- (for a qualified beneficiary that received a disability extension), the first day of the month that is more than 30 days after the date in which the beneficiary receives a final determination from the SSA, stating that the beneficiary is no longer disabled.

In addition, a qualified beneficiary’s COBRA continuation coverage may end early in the event that the beneficiary engages in conduct that would result in the termination of coverage for similarly situated non-COBRA employees (e.g., fraud).

COBRA Coverage and Medicare

COBRA coverage varies for Medicare beneficiaries depending on whether they become eligible for COBRA before or after they become entitled to Medicare. Medicare law requires that certain employers (those with 20 or more employees) provide their employees who are Medicare beneficiaries with the same coverage offered to their other employees. This includes family coverage, if it is offered.²²

If a working Medicare beneficiary experiences a qualifying event (e.g., retirement, job termination), he or she becomes eligible for 18 months of COBRA coverage from the date of the qualifying event. If the beneficiary’s family members lose coverage because of the qualifying event, they would be eligible for COBRA coverage for up to 36 months *from the date on which the employee became entitled to Medicare*. For example, if an employee becomes entitled to

¹⁹ After a determination of disability, there is a 5-month waiting period for Social Security disability cash benefits and another 24-month waiting period for Medicare benefits.

²⁰ A bankruptcy under Chapter 7 of Title 11 of the *U.S. Code* would be such an instance. Chapter 7 bankruptcies (business liquidations) are distinct from Chapter 11 (reorganization) bankruptcies. Under Chapter 7, the employer goes out of existence. COBRA is provided through the employer; if there is no employer, there is no COBRA obligation. Under Chapter 11, the employer remains in business and may be required to honor its COBRA obligations.

²¹ The preexisting condition requirement language predates the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended), which prohibits group health plans from excluding coverage for preexisting health conditions. See 42 U.S.C. §300gg-3. Prior to the ACA, group health plans were sometimes allowed to temporarily exclude benefits for preexisting conditions during what was referred to as an “exclusion period.”

²² For more information on working Medicare beneficiaries, see Center for Medicare and Medicaid Services, *Medicare and Other Health Benefits: Your Guide to Who Pays First*, December 2018, at <https://www.medicare.gov/Pubs/pdf/02179-medicare-coordination-benefits-payer.pdf>; and U.S. Social Security Administration, *Medicare and COBRA*, at <http://www.socialsecurity.gov/disabilityresearch/wi/medicare.htm#cobra>.

Medicare in January 2019 and then retires 12 months later in January 2020, the covered family members would be eligible for 24 months of COBRA coverage, rather than 36 months. However, no matter when the qualifying event and Medicare entitlement occurs, COBRA coverage for qualified family members can never be less than 18 months.

On the other hand, if an individual is receiving COBRA benefits and becomes entitled to Medicare during the 18 month period, COBRA coverage can be terminated early (see above, under “Duration of Coverage”). In this case, the individual’s covered family members can continue their COBRA coverage for up to 36 months from the date of the original qualifying event.

Notice Requirements

Employers, employees, and the employer’s health plan administrators all have to meet requirements for notifying each other regarding COBRA.

- At the time an employee first becomes covered under a health plan, the plan administrator must provide written notification to the employee and his or her spouse regarding rights if a qualifying event should occur.

If a qualifying event occurs, other notices are required. The time lines for all of the following notifications, with the exception of the first notification, were recently extended in response to the COVID-19 pandemic. As such, the days from March 1, 2020, until 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration), are not to count toward any of the specified time lines.²³

- The employer must notify the plan administrator of the event within 30 days of the death of the employee, a termination, or reduction in hours, the employee becoming entitled to Medicare, or the beginning of bankruptcy proceedings.
- The employee or former employee (or qualified spouse/dependent) must notify the plan administrator within 60 days of a divorce or legal separation of a covered employee, a dependent child’s ceasing to be a dependent of the covered employee under the policy, or the occurrence of a second qualifying event after a beneficiary has become entitled to a maximum 18 (or 29) months of COBRA.
- COBRA beneficiaries who are determined by the SSA to have been disabled within the first 60 days of COBRA coverage must notify the plan administrator of this determination to be eligible for the additional 11 months of coverage. They must provide this notice within 60 days of receiving the SSA’s decision. (Relatedly, these beneficiaries must also provide notice if they are subsequently determined by the SSA to no longer be disabled. They must notify the plan administrator within 30 days of receiving such determination.)
- Within 14 days of receiving notice of a qualifying event, the plan administrator must notify, in writing, each covered employee (and qualified spouse/dependent) of the employee’s right to elect COBRA continuation coverage.

²³ The COVID-19 national emergency refers to the “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” issued on March 13, 2020. See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>. 85 *Federal Register* 26351.

Election of Coverage

A qualified individual must choose whether to elect COBRA coverage within an election period. This period is (at least) 60 days from the later of two dates: the date coverage would be lost due to the qualifying event or the date that the beneficiary is provided notice of the beneficiary's right to elect COBRA coverage. For those individuals who become eligible for COBRA after March 1, 2020, and during the COVID-19 national emergency, no days are to count toward this time line until 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration).²⁴

If electing COBRA coverage, the beneficiary must provide the employer or plan administrator with a formal notice of election. Coverage is retroactive to the date of the qualifying event. The employee or other affected person may also waive COBRA coverage. If an individual waives COBRA coverage, the individual may subsequently revoke the waiver and elect COBRA coverage, provided such activity is within the election period. In this instance, COBRA coverage must still be provided, but coverage could begin on the date of the revocation rather than the date of the qualifying event.

The Trade Act of 2002 (P.L. 107-210) provided a second election period for certain Trade Adjustment Assistance (TAA) Program participants.²⁵ Under the provision, qualified individuals who did not elect COBRA coverage during the regular election period can elect continuation coverage within the first 60-day period beginning on the first day of the month when they were determined to have become TAA-eligible. This COBRA election cannot be made later than six months after the date the TAA-related coverage was lost.

Paying for COBRA

Employers are not required to pay for the cost of COBRA coverage. They are permitted to charge the covered beneficiary 100% of the premium (both the portion paid by the employee and the portion paid by the employer, if any), plus an additional 2% administrative fee. For disabled individuals who qualify for an additional 11 months of COBRA coverage, the employer may charge up to 150% of the premium for these additional months.

For context, a Kaiser Family Foundation study provides figures for the average premiums for employer-sponsored health insurance coverage. In 2019, the average annual premium for employer-sponsored health insurance (which includes insurance sponsored by employers not subject to COBRA continuation coverage requirements) was \$7,188 for single coverage and \$20,576 for family coverage.²⁶ Covered, current employees contribute on average 18% of the premium for single coverage and 30% of the premium for family coverage. As such, paying up to 102% of the premium may be a financial hardship for newly unemployed individuals and these individuals may seek another type of coverage (e.g., a spouse's employer-sponsored coverage, individual market coverage, Medicaid) or go uninsured.²⁷

²⁴ 85 *Federal Register* 26351.

²⁵ Trade Adjustment Assistance (TAA) Program participants may be eligible for the Health Coverage Tax Credit and could claim the credit to help cover the costs of COBRA continuation coverage. For more information on this issue, see CRS Report R44392, *The Health Coverage Tax Credit (HCTC): In Brief*.

²⁶ Kaiser Family Foundation and Health Research Education Trust, *Employer Health Benefits 2019 Annual Survey*, September 2019, at <http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2019>.

²⁷ For information on some of these other coverage types, see CRS In Focus IF11523, *Health Insurance Options Following Loss of Employment*.

The American Recovery and Reinvestment Act COBRA Premium Subsidy and Policy Responses to the COVID-19 Pandemic-Related Recession

The American Recovery and Reinvestment Act (ARRA; P.L. 111-5) established a temporary COBRA premium subsidy that helped to mitigate the potential financial barriers that employees who involuntarily lost their jobs around the time of the Great Recession (December 2007 through June 2009) faced in trying to maintain their employer-sponsored health insurance coverage.²⁸

Those eligible for the subsidy could have paid 35% of the COBRA continuation coverage premium (with the remaining premium being offset by the subsidy) and would have been able to enroll in COBRA continuation coverage. Individuals would have been eligible for the subsidy if they were considered qualified beneficiaries as a result of an involuntary termination that occurred between September 1, 2008, and May 31, 2010. (As such, spouses and dependents could have been considered eligible individuals.) Eligible individuals included those eligible for COBRA, as well as federal, state, and local workers. State “mini-COBRA” programs for small businesses were also eligible for the subsidy. Individuals could have received the premium reduction until the earliest of 15 months, the end of the COBRA coverage, or the date on which the individual became eligible for another group health plan or Medicare benefits.

Households with modified adjusted gross income less than or equal to \$125,000 for single filers and \$250,000 for joint filers would have been eligible for the full subsidy, and households with income up to \$145,000 for single filers and \$290,000 for joint filers would have received a portion of the subsidy. Where applicable, excess COBRA premium reductions would have been recaptured when individuals filed their income taxes.

Generally, the employer providing the subsidized COBRA continuation coverage would have been reimbursed the remaining 65% of the premium for the COBRA continuation coverage through a credit against its payroll taxes. In some instances, a multiemployer plan or the insurer would have been allowed the credit.

In response to the Coronavirus Disease 2019 (COVID-19) pandemic and the related recession, four bills (Section 70307 of H.R. 6379; H.R. 6514; Division B, Title III of H.R. 6800; and Section 4 of H.R. 6810) have been introduced in the 116th Congress that have provisions that are fairly similar to the ARRA COBRA premium subsidy. Most notably, all bills are distinct from the ARRA COBRA premium subsidy in the amount of premium assistance available to eligible individuals. Three bills (Section 70307 of H.R. 6379; H.R. 6514; and Division B, Title III of H.R. 6800) would allow eligible individuals to pay 0% of the COBRA continuation coverage premium in order to be enrolled in coverage (i.e., would provide a 100% COBRA premium subsidy), and the fourth bill (Section 4 of H.R. 6810) would allow an eligible individual to pay the same percentage of premiums that the individual would have paid for the same health insurance plan had the individual not experienced the qualifying event. All bills except for Section 4 of H.R. 6810 would also allow furloughed employees (i.e., employees that have a specified reduction in hours [which varies by proposal] but do not lose their employer-sponsored coverage as a result of such reduction) to also be eligible for similar premium assistance. All bills would make employers eligible for payroll tax credits in amounts that equal the amount of premiums not paid by their eligible individuals. Three of the bills (Section 70307 of H.R. 6379; H.R. 6514; and Section 4 of H.R. 6810) would retain the ARRA COBRA premium subsidy phaseout for households with higher incomes. Other differences exist between the bills and between the bills and the ARRA COBRA premium subsidy.

Once an individual elects COBRA coverage, the plan cannot require the individual to pay any premiums within the first 45 days after the election of coverage. The plan must allow a qualified beneficiary to pay for the coverage in monthly installments, although alternative intervals may also be offered. As mentioned above, employers may terminate the COBRA coverage on the first day for which timely payment of the premium is not made (payment is timely if it is made within 30 days of the payment due date).

²⁸ More information on the ARRA premium subsidy can be found on the IRS’s “COBRA Health Insurance Continuation Premium Subsidy” webpage, at <https://www.irs.gov/newsroom/cobra-health-insurance-continuation-premium-subsidy>. The IRS indicates that this webpage is no longer being updated. It was last reviewed or updated on March 26, 2020.

The 45-day and 30-day time lines associated with premium payments were recently extended in response to the COVID-19 pandemic.²⁹ Specifically, the days from March 1, 2020, until 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration) are not to count toward these time lines.

For example, if a COBRA beneficiary were required to pay COBRA premiums on March 15, 2020, and April 15, 2020, and failed to do so, the beneficiary's payments for March and April would still be considered timely if made within the 30 days after the 60th day (i.e., 90 days) following the announced end of the COVID-19 national emergency (or other specified date). This beneficiary's employer would still be required to cover the beneficiary during March and April, even though premiums may not be collected until after the COVID-19 national emergency. In the event that the beneficiary subsequently did not make a timely premium payment (after accounting for the extension), the employer would be obligated only to cover the beneficiary during the time period that the beneficiary made timely payments. Building off of the aforementioned example, if the beneficiary made a timely payment after the COVID-19 national emergency for March but not April (or any subsequent month), the employer would not be obligated to cover the beneficiary after March.

Penalties for Noncompliance

In general, employers are subject to an IRS excise tax for each violation involving a COBRA beneficiary, and the tax is \$100 per day per beneficiary for each day of the period of noncompliance.³⁰ ERISA also allows beneficiaries to bring civil action against plan administrators that fail to provide beneficiaries with required COBRA notifications (see "Notice Requirements").³¹ In this instance, a court may find plan administrators liable for each violation up to \$110 per day per beneficiary.

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²⁹ 85 *Federal Register* 26351.

³⁰ In some instances, this excise tax may fall on the plan (in the case of a multiemployer plan) instead of the employer. Additionally, other entities (e.g., the insurer of the plan, the third-party administrator administering claims under the plan) may also be subject to this excise tax if such entity is responsible for performing the violating act.

³¹ State and local plans covered under the Public Health Service Act are not subject to the same financial penalties provided under the tax code or ERISA. However, state and local employees have the right to bring an "action for appropriate equitable relief" if they are "aggrieved by the failure of a state, political subdivision, or agency or instrumentality thereof" to provide continuation health insurance coverage, as required under the act. Public Health Service Act; 42 U.S.C. §300bb-1.

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