

# Health Insurance Continuation Coverage Under COBRA

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**Ryan J. Rosso**  
Analyst in Health Care  
Financing

## Health Insurance Continuation Coverage Under COBRA

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 2019, 56.4% 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 when a working family member experiences a reduction in hours in the workplace, dies, or divorces his or her spouse.

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), a private-sector employer with 20 or more employees that provides 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 that fail to provide the continued health insurance option are subject to penalties. (COBRA also created similar requirements on state and local government employers; however, this report focuses on the requirements applicable to private-sector employers.)

COBRA coverage usually lasts for 18 months but 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 may be charged up to 100% of the premium, plus an additional 2% for the administrative costs incurred. For context, the Agency for Healthcare Research and Quality Medical Expenditure Panel Survey estimated the average health insurance premium among private-sector employers in 2019 was \$6,972 for single coverage and \$20,486 for family coverage. However, from April 1, 2021, through September 30, 2021, certain COBRA-eligible individuals may be eligible for a 100% subsidy of their COBRA coverage premiums (including administrative fees). As such, these individuals would not be required to pay any premium amounts, or administrative fee amounts, for COBRA coverage during this period.

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. This report also includes a high-level description of the temporary COBRA premium assistance included in the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2).

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## COBRA Coverage

Most individuals with private health insurance are covered through an employer, or through the employer of a family member. In 2019, 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.<sup>1</sup> The Census Bureau estimates that in 2019, 56.4% of the United States civilian, noninstitutionalized population (including employees, their spouses, and their dependents) had their insurance through an employer.<sup>2</sup> 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 that offer health insurance to continue coverage for their employees under certain circumstances.<sup>3</sup> The law affects private-sector employer group health plans through amendments to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC).<sup>4</sup>

### References to COBRA Coverage

Colloquially, the term *COBRA coverage* is often used to refer to all coverage made available to employees who experience qualifying events (e.g., termination of employment) that resulted in a loss of employer-sponsored coverage. However, the term *COBRA* refers to the Consolidated Omnibus Budget Reconciliation Act of 1985, which is the law that created the continuation coverage requirements in the Employee Retirement Income Security Act (ERISA), Public Health Service Act (PHSA), and Internal Revenue Code (IRC). The ERISA and IRC requirements apply to private-sector employers, whereas the PHSA requirements apply to state and local government employers.

Other laws have since created other continuation coverage requirements. For example, P.L. 100-654 established "COBRA-like" continuation coverage requirements for the Federal Employee Health Benefit Program (FEHB), the program that provides health insurance to federal employees, retirees, and their dependents. Under these requirements, the federal government must make coverage available to federal employees participating in FEHB who experience certain qualifying events (e.g., separation from service). Even though these requirements address continuation coverage in the context of federal employees, they were not included in the Consolidated Omnibus Budget Reconciliation Act of 1985 and technically are not considered *COBRA* continuation coverage requirements. In other words, not all continuation coverage requirements are *COBRA* requirements.

This report focuses on the *COBRA* continuation coverage requirements as they pertain to private-sector employers (i.e., the ERISA and IRC requirements).

<sup>1</sup> Kaiser Family Foundation, *Employer Health Benefits 2019 Annual Survey*, September 2019, pp. 44, 52, at <https://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2019>.

<sup>2</sup> Katherine Keisler-Starkey and Lisa N. Bunch, *Health Insurance Coverage in the United States: 2019*, U.S. Census Bureau, September 2020, at <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf>.

<sup>3</sup> 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.

<sup>4</sup> 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 the 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.

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.<sup>5</sup> 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 those individuals who become uninsured as a result of changes in their (or their family member's) employment or their family status.

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., COBRA-eligible individuals 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).<sup>6</sup> 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.<sup>7</sup>

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).<sup>8</sup> 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. Finally, this report

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

<sup>6</sup> 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*.

<sup>7</sup> 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 Credit and Cost-Sharing Reductions*.

<sup>8</sup> 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.

provides a high-level description of the temporary COBRA premium assistance included in the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2).

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 that 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 need only maintain such a plan to come under the statute's continuation coverage requirements.<sup>9</sup>

## Covered Employers

COBRA covers all employers, with the following exceptions:<sup>10</sup>

- **Small employers.**<sup>11</sup> Employers with fewer than 20 employees are not covered under COBRA.<sup>12</sup> 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.<sup>13</sup>

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<sup>9</sup> 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).

<sup>10</sup> Although this report focuses on the COBRA continuation coverage requirements as they pertain to private-sector employers, 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. For more information on state and local government COBRA continuation coverage requirements, see Centers for Medicare & Medicaid Services, *COBRA Continuation Coverage Questions and Answers*, at [https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/cobra\\_qna](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/cobra_qna).

<sup>11</sup> According to the Census Bureau's *Statistics of U.S. Business*, there were approximately 5.4 million firms with fewer than 20 employees in 2018. In total, these entities employed 21.3 million people, or about 16% of employees covered in the survey. U.S. Census Bureau, “2018 SUSB Annual Data Tables by Establishment Industry,” at <https://www.census.gov/data/tables/2018/econ/susb/2018-susb-annual.html>.

<sup>12</sup> 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).

<sup>13</sup> 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=>

- **Churches and certain church-related organizations.**<sup>14</sup>
- **Federal government.** 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.<sup>15</sup>

## Qualified Beneficiaries

In general, a qualified beneficiary is

- an employee<sup>16</sup> covered under the group health plan who loses coverage due to a voluntary or involuntary<sup>17</sup> 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.

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<sup>14</sup> COBRA requirements do not apply to church plans, which 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).

<sup>15</sup> Some differences exist between COBRA and FEHB TCC. For example, under FEHB, there are different eligibility requirements, 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/>.

<sup>16</sup> 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.

<sup>17</sup> 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.



## 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 July 1 of a given year that causes the employee to lose coverage on November 1 of the same year. 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
- 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.<sup>18</sup>

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.

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<sup>18</sup> In this context, the term *dependency* refers to a child being covered by a parent’s health insurance policy. It does not have the same definition of the term as it is used for tax purposes. 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 the dependent coverage available to a child until the child turns 26. See 42 U.S.C. §300gg-14.



- If the employer files for Chapter 11 bankruptcy, the employer is required to offer COBRA coverage to retirees who lost their retiree health insurance due to the bankruptcy filing. 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 qualifying 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 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.<sup>19</sup> (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;<sup>20</sup>
- the first day after the qualified beneficiary becomes covered under another employer's group health plan, unless the new plan excludes coverage for a preexisting condition;<sup>21</sup>
- the date the qualified beneficiary is entitled to Medicare benefits; or
- (for a qualified beneficiary during 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

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<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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."

beneficiaries with the same coverage offered to their other employees. This includes family coverage, if it is offered.<sup>22</sup>

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 Medicare in January of a given year and then retires 12 months later in January of the subsequent year, 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 certain aspects of 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 of their rights if a qualifying event should occur.

If a qualifying event occurs, other notices are required.

- The employer must notify the plan administrator of the event within 30 days of the employee's death, termination, or reduction in hours; the employee becoming entitled to Medicare; or the beginning of the employer's 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.)

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<sup>22</sup> 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*, August 2020, 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>.

- 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.

The timelines for the notices described in the last three bullets were temporarily extended in response to the COVID-19 pandemic. Specifically, since March 1, 2020, no days are to count toward the timelines until the earlier of (1) one year from the date the beneficiary or entity was first eligible for the timeline relief or (2) 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration).<sup>23</sup>

## 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, no days are to count toward this timeline until the earlier of: (1) the date the beneficiary was first eligible for the timeline relief, or (2) 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration).<sup>24</sup>

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.<sup>25</sup> 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

<sup>23</sup> 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://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>). See also *Federal Register* and *Disaster Relief Notice* for examples on how the relief applies: 85 *Federal Register* 26351; and Department of Labor, Employee Benefits Security Administration, *EBSA Disaster Relief Notice 2021-01*, "Guidance on Continuation of Relief for Employee Benefit Plans and Plan Participants and Beneficiaries Due to the COVID-19 (Novel Coronavirus) Outbreak," at <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>.

<sup>24</sup> 85 *Federal Register* 26351 and Department of Labor, Employee Benefits Security Administration, *EBSA Disaster Relief Notice 2021-01*, Guidance on Continuation of Relief for Employee Benefit Plans and Plan Participants and Beneficiaries Due to the COVID-19 (Novel Coronavirus) Outbreak, <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>.

<sup>25</sup> 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*.

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.

As a result of the ARPA, individuals who became eligible for COBRA continuation coverage as a result of a reduction in hours or involuntary termination before April 1, 2021, and who did not initially elect COBRA coverage (or who initially elected coverage and subsequently discontinued coverage before April 1) were allowed a second opportunity to enroll in COBRA coverage (if eligible).<sup>26</sup> Individuals provided the second election period should have received a notice informing them of this opportunity prior to May 31, 2021. These individuals then could have elected COBRA continuation coverage during the 60 days after they were provided the notice. Under this second election, the COBRA continuation coverage would have begun with the first coverage period that begins on or after April 1 and would not extend beyond the period of COBRA continuation coverage for which the individual is eligible. The aforementioned timeline relief provided during the COVID-19 national emergency does not apply to these 60-day notice or election periods.<sup>27</sup>

## Paying for COBRA

Some individuals currently do not have to pay any premium amounts to enroll in COBRA coverage provided from April 1, 2021, through September 30, 2021. This assistance was included as part of the ARPA, which provided a 100% premium subsidy of COBRA continuation coverage in certain instances. As such, eligible individuals are not required to pay any premium amounts, or administrative fee amounts, for COBRA coverage during this period. For more information on the ARPA COBRA premium assistance, see the text box below.

Absent the ARPA premium assistance, employers are not required to cover 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, the Agency for Healthcare Research and Quality Medical Expenditure Panel Survey provides estimates for the average health insurance premiums among private-sector employers. In 2019, the average annual premium for employer-sponsored health insurance was \$6,972 for single coverage and \$20,486 for family coverage.<sup>28</sup> Covered, current employees contributed on average 17% of the premium for single coverage and 27% of the premium for family coverage. As such, paying up to 102% of the premium may be a financial hardship for newly unemployed

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<sup>26</sup> This secondary election period may overlap with the first election period and does not preclude an individual from their ability to elect COBRA coverage under the first election period. The election period that an individual elects COBRA continuation coverage under impacts their ability to receive the premium assistance and potentially, the start date of the coverage. For a discussion on these issues, see Department of Labor, *FAQs about COBRA Premium Assistance under the American Rescue Plan Act of 2021*, April 7, 2021, <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>.

<sup>27</sup> Department of Labor, *FAQs About COBRA Premium Assistance Under the American Rescue Plan Act of 2021*, April 7, 2021, at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-premium-assistance-under-arp.pdf>.

<sup>28</sup> Agency for Healthcare Research and Quality (AHRQ), *MEPS Insurance Component Chartbook 2019*, AHRQ Publication No. 20(21)-0052, October 2020, p. 13, at [https://www.meps.ahrq.gov/data\\_files/publications/cb24/cb24.pdf](https://www.meps.ahrq.gov/data_files/publications/cb24/cb24.pdf).



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.<sup>29</sup>

### **The American Rescue Plan Act of 2021 COBRA Premium Assistance**

The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) temporarily subsidizes continuation coverage for certain COBRA-eligible individuals and includes provisions that reimburse employers (or, in some instances, multiemployer plans or insurers) the unpaid premium amounts through a refundable payroll tax credit.

The ARPA provides eligible individuals with a 100% premium subsidy of COBRA coverage from April 1, 2021, through September 30, 2021. As such, eligible individuals are not required to pay any premium amounts, or administrative fee amounts, for COBRA coverage during this period. Individuals generally are eligible for the COBRA premium assistance if they become eligible for COBRA coverage as a result of an involuntary termination or reduction in hours and elect COBRA coverage. In addition, to be eligible for the premium assistance, the individual's employer must be subject to federal COBRA requirements (i.e., private-sector or state and local government requirements) or "comparable" state continuation coverage requirements. Although the assistance is available through September 30, 2021, in some instances, the COBRA premium assistance may end earlier for certain individuals. For example, COBRA premium assistance will end early for those who reach their maximum COBRA coverage period prior to September 30, 2021.

Generally, employers are initially required to cover the costs of providing this subsidized COBRA coverage but are able to offset these costs via a refundable payroll tax credit. In many situations, employers would claim this credit quarterly, though the credit (including any refundable portion) is allowed to be paid to the employer in advance up to the amount calculated through the end of the most recent payroll period in the quarter. In instances where there is a multiemployer plan, the multiemployer plan initially covers the cost and will claim the payroll tax credit. In instances where employers purchase fully insured plans, the insurer providing the plan is to initially cover the cost and claim the credit.

For more information on the ARPA COBRA premium assistance, see CRS Insight IN11643, *The American Rescue Plan Act of 2021 (ARPA; P.L. 117-2) COBRA Premium Assistance*, and "Section 9501: Preserving Health Benefits for Workers" in CRS Report R46777, *American Rescue Plan Act of 2021 (P.L. 117-2): Private Health Insurance, Medicaid, CHIP, and Medicare Provisions*.

**Notes:** The ARPA COBRA premium assistance is similar, though not identical to, the COBRA premium assistance that Congress previously established in Title III of Division B of the American Recovery and Reinvestment Act (ARRA, as amended; P.L. 111-5). The ARRA COBRA premium assistance provided up to 15 months of COBRA premium subsidies to certain individuals who enrolled in COBRA coverage after experiencing an involuntary termination on or after September 1, 2008, and through May 31, 2010. Individuals who received the subsidy were required to pay no more than 35% of their COBRA premiums. As such, these individuals received a 65% COBRA premium subsidy. 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.

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).

<sup>29</sup> For information on some of these other coverage types, see CRS In Focus IF11523, *Health Insurance Options Following Loss of Employment*.

The 45-day and 30-day timelines associated with premium payments were extended in response to the COVID-19 pandemic.<sup>30</sup> Specifically, after March 1, 2020, no days are to count toward these timelines until the earlier of (1) one year from the date the individual was first eligible for timeline relief or (2) 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration).

For example, if a COBRA beneficiary were required to pay COBRA premiums on February 15, 2021, and March 15, 2021, and failed to do so, the beneficiary's payments for February and March still would be considered timely if made within the 30 days after the earlier of (1) one year from the date the beneficiary was first eligible for relief or (2) 60 days after an announced end of the COVID-19 national emergency (or another date specified by the IRS and Employee Benefits Security Administration). This beneficiary's employer still would be required to cover the beneficiary during February and March, 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 to cover the beneficiary only during the period that the beneficiary made timely payments. Building off the aforementioned example, if the beneficiary made a timely payment after the relief for February but not March, the employer would not be obligated to cover the beneficiary in 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.<sup>31</sup> ERISA also allows beneficiaries to bring civil action against plan administrators that fail to provide beneficiaries with required COBRA notifications (see "Notice Requirements").<sup>32</sup> In this instance, a court may find plan administrators liable for each violation up to \$110 per day per beneficiary.

## Author Information

Ryan J. Rosso  
Analyst in Health Care Financing

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<sup>30</sup> 85 *Federal Register* 26351 and Department of Labor, Employee Benefits Security Administration, *EBSA Disaster Relief Notice 2021-01*, "Guidance on Continuation of Relief for Employee Benefit Plans and Plan Participants and Beneficiaries Due to the COVID-19 (Novel Coronavirus) Outbreak," at <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>.

<sup>31</sup> 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.

<sup>32</sup> 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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