



COBRA & COVID-19

In the United States, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) allows qualified beneficiaries who lose health benefits due to a qualifying event to continue group health benefits. While some group health plans may provide COBRA continuation coverage at a reduced rate or at no cost, most qualified beneficiaries pay the full COBRA premium. COBRA coverage lasts either 18, 29 or 36 months, depending on the qualifying event experienced by the beneficiary or if the individual is eligible for a disability extension.

Generally, COBRA payments are made on an after-tax basis. Under normal rules, qualified beneficiaries have 45 days after the election date to make an initial premium payment. Under these longstanding rules, the plan may terminate the qualified beneficiary's COBRA rights if no initial premium payment is made before the end of the 45-day period. Additionally, plans must allow monthly premium payments, which are due on the first day of each month with a minimum 30-day grace period. A plan may terminate COBRA coverage for nonpayment or insufficient payment of premiums after the grace period. However, due to the long-lasting impact of the COVID-19 pandemic, regulatory relief and new laws have greatly impacted both premium payments and COBRA timelines.

Timeline Changes

In April 2020, the DOL announced that certain deadlines under ERISA were suspended starting March 1, 2020, until 60 days after the announced end of the COVID-19 National Emergency or such other date determined by the agencies (the "Outbreak Period"). The relief tolled (paused) the following deadlines for participants and beneficiaries during the Outbreak Period:

- The 30-day period (or 60-day period, if applicable) to request a HIPAA special enrollment.
- The 60-day period for electing COBRA continuation coverage.
- The date/deadline for making COBRA premium payments.
- The deadline for individuals to notify the plan of a COBRA qualifying event or determination of disability.
- The deadline within which employees can file a benefit claim, or a claimant can appeal an adverse benefit determination, under the group health plan or disability plan claims procedures described in the plan.
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The deadline for a claimant to file information to perfect a request for external review upon finding that the request was not complete.

Under these rules, many anticipated that the relief would end on February 28, 2021. However, the DOL, IRS and HHS announced in February of 2021 that individuals and plans are given a one-year relief based on their individual or plan basis. **This is anticipated to have a high level of administrative difficulty and complexity.**

Accordingly, individuals and plans are granted relief for their own fact-specific timeframes and, therefore, may still take advantage of relief beyond February 28, 2021, until the earlier of:

- 1 year from the date they were first eligible for relief, or
- 60 days after the announced end of the National Emergency (the end of the Outbreak Period).

Examples involving only the timeline rules (no subsidy considerations).

Facts	“Old/Regular Rules”	COVID-19 Rules
Joey terminated employment and received a COBRA election notice on February 1, 2020, before the COVID-19 pandemic and the start of the Outbreak Period.	Joey must elect COBRA within 60 days, or by April 1, 2020. His first payment is due within 45 days following April 1, or May 16, 2020.	Under the COVID-19 relief, the 60-day deadline for Joey to elect coverage was paused 29 days into his COBRA election period, or on March 1st, when Outbreak Period began. Therefore, the period from March 1, 2020 to February 28, 2021 was tolled. The clock starts running on Joey as of March 1, 2021. He has the remaining 31 days, until March 31, 2021, to elect COBRA. Joey’s maximum coverage period ends July 31, 2021.
Monica is terminated from employment in May of 2021 and begins her COBRA election period on June 1, 2021.	Monica has 60 days to elect COBRA, or by July 31st. Her initial premium payment would be due within 45 days, or September 15, 2021.	Monica has until the earlier of the end of the outbreak period or July 31, 2022 to elect COBRA and until 45 days after she elects COBRA to make her first premium payment. Monica’s maximum coverage period ends November 30, 2022.
Ursula is terminated from employment in May of 2021 and begins her COBRA election period on June 1, 2021. The national emergency is declared over on September 1 of 2021.	Ursula would have 60 days to elect COBRA, or by August 1. Her first premium would be due within 45 days, or September 16, 2021.	The period from July 31, 2021 (Ursula’s deadline to elect COBRA) and October 31, 2021 (the end of the outbreak period – 60 day after the declared end of the COVID-19 national emergency) is tolled. Accordingly, Ursula would have to elect COBRA by November 1, 2021. Ursula’s maximum coverage period ends November 30, 2022.

<p>Rachel was terminated from employment in May of 2020. She timely elects COBRA and made her first three premium payments (for June, July and August 2020). She stopped making premium payments after August.</p>	<p>Since Rachel timely elected COBRA and began paying premiums, her September 2020 premium was due September 1st, and her grace period of 30 days would have ended on September 31st</p>	<p>Under the COVID-19-related relief, Rachel is relieved of making her payment until the earlier of the end of the outbreak period or September 1, 2021. Rachel would be required to pay her September 1, 2020 premium by September 30, 2021 (12 months + a 30-day grace period). Rachel's October 2021 premium would be due by October 1st (subject to a 30-day grace period). Rachel's maximum coverage period ends November 30, 2021.</p>
<p>Janice was terminated from employment in May of 2020 and begins her COBRA election period on June 1, 2020. She timely elects COBRA, and makes a premium payment for June, July and August of 2020. She then stops making COBRA premium payments in September of 2020. The national emergency is declared over on June 1, 2021.</p>	<p>Since Janice timely elected COBRA and began paying premiums, her September 2020 premium was due September 1st, and her grace period of 30 days would have ended September 31st.</p>	<p>Janice timely elected COBRA and began paying premiums and stopped making premiums after August of 2020. Under the COVID-19-related relief, Janice's deadline to pay her September 1, 2020 premium was extended until the end of the Outbreak Period (The June 1, 2021 announced end of the national emergency plus 60 days) which is September 1, 2021. Janice's maximum coverage period ends November 30, 2021 to pay her premiums.</p>

Subsidy Rules

The American Rescue Plan Act of 2021 (ARPA) provides for a 100% COBRA premium subsidy for individuals who were involuntarily terminated or whose hours were reduced and who enroll in COBRA coverage from April 1, 2021 to September 30th of 2021. The subsidy is not available for:

- individuals who voluntarily terminate employment (i.e., they quit or resign),
- involuntarily terminated employees (or employees whose hours are reduced – voluntarily or involuntarily) who:
 - are eligible for or become eligible for other group coverage (other than excepted benefits).
 - are eligible for or become eligible for Medicare.
 - reach their maximum coverage period.

The employer pays the premium and recoups the money through a payroll tax credit. The COBRA premium coverage is not conditioned on the employee's termination of employment being related to or because of the COVID-19 pandemic. Former employees who become eligible for other group coverage while they are receiving the subsidy are obligated to notify their former employer that they are no longer eligible for the subsidy or risk paying a penalty.

The subsidy rules apply to all group health plans as defined by ERISA. This includes health coverage, vision, dental, prescription drug plans and health reimbursement arrangements. It does not apply to health flexible spending accounts (FSAs) or health savings accounts (HSAs).

Previous COBRA Beneficiaries....	New COBRA Beneficiaries...	No Double Dipping...	Medicare
Individuals who lost coverage due to involuntary termination (which does not have to be related to COVID-19) or reduction of hours before April 1, 2021, and who are still in their maximum coverage period. Individuals who waived COBRA or whose coverage lapsed due to nonpayment of premiums but are still in their maximum coverage period will be offered an opportunity to re-enroll during a special 60-day election period. These individuals are "assistance eligible individuals" if they elect COBRA.	Individuals who lost coverage due to involuntary termination (which does not have to be related to COVID-19) or reduction of hours (voluntary or involuntary) between April 1 and September 30 of 2021. These individuals are "assistance eligible individuals" if they elect COBRA.	Individuals who are eligible for other group health plan coverage are not/no longer assistance eligible individuals. If they become eligible for other health plan coverage during the subsidy coverage period, they are obligated to notify the employer subsidizing their COBRA coverage that they are no longer eligible for the subsidy). Financial penalties for intentionally failing to notify the employer providing the subsidy is the greater of \$250 or 110 percent of the COBRA premium provided to them.	Individuals who are eligible for Medicare cannot receive the subsidy. The subsidy eligibility ends once they become Medicare-eligible if that happens between April and September of 2021.

Examples involving both the timeline rules and the subsidy considerations.

Facts	"Old/Regular Rules"	COVID-19 Rules
Rachel was terminated from employment in May of 2020 and timely elects COBRA. She pays her premiums for June, July and August of 2020. She then stops making COBRA premium payments in September of 2020.	Since Rachel timely elected COBRA and began paying premiums, her September 2020 premium was due September 1st, and her grace period of 30 days would have ended on September 31st.	Under the COVID-19 related extensions, Rachel's deadline to pay her September 1, 2020 premium is extended to September 1, 2021. In April of 2021, her former employer must provide her with a Notice of Subsidy Availability and a Notice of Extended Election Period, where she will have at least 60-days to re-enroll in COBRA. If she elects to re-enroll in COBRA (and is not eligible for other group coverage - other than excepted benefits- or Medicare), she will become an assistance eligible individual (AEI) and will receive a subsidy to cover 100% of the COBRA premium through September 30, 2021

		<p>(assuming she does not become eligible for other group coverage or Medicare during that time).</p> <p>Because Rachel's maximum COBRA coverage period ends November 30, 2021, she may remain enrolled in COBRA for 2 months after her subsidy expires, but she will be responsible for paying up to 102% of the premium cost.</p>
<p>Gunther was terminated from employment in November 2019 and did not elect COBRA; however, as of April 1, 2021 he is still within his 18- month COBRA maximum coverage period (which ends April 30, 2021).</p>	<p>Gunther would have 60 days to elect COBRA, or by January 1, and his first premium payment would be due within 45 days, or February 14, 2020.</p>	<p>Gunther must receive a Notice of Subsidy Availability and Notice of Extended Election Period from his former employer, and he will have at least 60-days to enroll in COBRA. If he elects COBRA (and he is not eligible for other group coverage- other than excepted benefits- or Medicare), he will become an assistance eligible individual (AEI) for the month of April 2021 and will receive a 100% premium subsidy for the month. His maximum coverage period expires on April 30, 2021 and, therefore, he will no longer be an AEI after April 30, 2021 and no longer eligible for COBRA.</p>
<p>Richard quit his job in January of 2020 (before the pandemic) and begins his COBRA election period on February 1, 2020. He does not elect COBRA.</p>	<p>Richard would have had 60 days to elect COBRA, or by April 1, 2020, and his first premiums payment would have been due within 45 days, or May 16, 2020.</p>	<p>Under the COVID-19 related extensions, because the COVID-19 National Emergency remains ongoing, Richard has until April 1, 2021 to elect COBRA.</p> <p>In April of 2021 Richard's former employer is NOT required to send him a Notice of Subsidy Availability or a Notice of Extended Election Period because he voluntarily left his job. On July 31, 2021 Richard will reach the end of his 18-month maximum coverage period.</p>
<p>Chandler was terminated from employment in January of 2020 (prior to and unrelated to the pandemic) and begins his COBRA election period on February 1, 2020. He does not elect COBRA.</p>	<p>Chandler would have had 60 days to elect COBRA, or by April 1, 2020, and his first premium payment would have been due within 45 days, or May 16, 2020.</p>	<p>Due to the COVID-19 related extensions, Chandler has until April 1, 2021 to elect COBRA. In April of 2021, his former employer must send him a Notice of Subsidy Availability and a Notice of Extended Election Period and he will have at least 60-days to enroll in COBRA. If he elects COBRA (and he is not eligible for other group coverage - other than excepted benefits- or Medicare), he will become an assistance eligible individual (AEI) and will receive a subsidy to cover 100% of the premium through July 31, 2021, unless he becomes eligible for other group coverage or Medicare during that time</p>

<p>Janice was fired from employment in March of 2021 for calling in sick too many times. She begins her COBRA election period on April 1, 2021.</p>	<p>Janice would have 60 days to elect COBRA, or until June 1, 2021. Her first premium payment would be due within 45 days, or by July 16, 2021.</p>	<p>Under the COVID-19-related relief, Janice has until June 1, 2022 to elect COBRA; however, in April of 2021, the former employer must send Janice a COBRA Election Notice, General Notice/Notice of Subsidy Availability, and a Notice of Extended Election Period and she will have at least 60-days to enroll in COBRA. If Janice elects COBRA (and she is not eligible for other group coverage - other than excepted benefits- or Medicare), she will become an assistance eligible individual (AEI) and will receive a 100% COBRA premium subsidy through September 30, 2021 unless she becomes eligible for other group coverage or Medicare in the interim.</p> <p>Janice's maximum COBRA coverage duration ends September 30th of 2022, therefore, from October 1, 2021 through September 30, 2022, Janice will have to pay up to 102% of the premium to continue her COBRA coverage.</p>
<p>Emily reduced her hours at work from full-time to part-time in March of 2021 so she could oversee home renovation projects. She begins her COBRA election period on April 1, 2021.</p>	<p>Emily would have 60 days to elect COBRA, or until June 1, 2021. Her first premium payment would be due within 45 days, or by July 16, 2021.</p>	<p>Under the COVID-19-related relief, Emily has until June 1, 2022 to elect COBRA; however, in April of 2021, her employer must send Emily a COBRA Election Notice, General Notice/ Notice of Subsidy Availability, and a Notice of Extended Election Period and she will have at least 60-days to enroll in COBRA. If Emily elects COBRA (and she is not eligible for other group coverage- other than excepted benefits- or Medicare), she will become an assistance eligible individual (AEI) and will receive a 100% COBRA premium subsidy through September 30, 2021 unless she becomes eligible for other group coverage or Medicare in the interim.</p> <p>Emily's maximum COBRA coverage duration ends September 30th of 2022, therefore, from October 1, 2021 through September 30, 2022, Emily will have to pay up to 102% of the premium to continue her COBRA coverage.</p>

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