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The DOL issues model notices and answers questions about the new COBRA subsidy

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On April 7, the Department of Labor (DOL) issued model notices and FAQs as a follow up to Congress's recent passage of COBRA subsidies for certain individuals. [The guidance is available here.](#)

As a reminder, under the American Rescue Plan Act of 2021 ("ARPA"), individuals who lose health care coverage due to their or their family member's involuntary termination (for reasons other than the employee's gross misconduct) or reduction of hours are eligible for a tax-free subsidy of 100% of the COBRA cost for up to six months from the period April 1, 2021, through September 30, 2021.

Employers must provide a notice describing the subsidy to the following individuals:

- COBRA-qualified beneficiaries who: (i) are currently enrolled in COBRA continuation coverage as a result of a reduction in hours or an involuntary termination of employment; or (ii) were previously offered COBRA continuation coverage as a result of a reduction in hours or an involuntary termination of employment but declined coverage at that time, or elected coverage and later discontinued it, and whose maximum continuation coverage period has not yet expired.
 - *Notice must be provided by May 31, 2021.*
- COBRA-qualified beneficiaries who have qualifying events between April 1, 2021, and September 30, 2021.
 - *Notice must be provided within 60 days of the event or, if the plan so provides, loss of coverage.*

The DOL clarified that the COVID-19-related extended deadline relief for COBRA elections and notices do not apply to the COBRA subsidy's 60-day notice and election periods. In other words, qualified beneficiaries under both scenarios above have only 60 days after the notice is provided to elect COBRA with the subsidy. These individuals have a longer period to elect unsubsidized COBRA coverage.

The DOL's model notices for both of these [scenarios are available here](#). The DOL also published a model notice applicable to state mini-COBRA continuation coverage under insured plans, as well as a notice to inform qualified beneficiaries of the end of the subsidy period.

When sending out the subsidy notices, employers should also include enrollment forms, including forms individuals can complete to indicate that they are eligible for the subsidy and not eligible for another group health plan or Medicare. The DOL also published a summary of the ARPA provisions related to the COBRA subsidy. It informs individuals of the penalties they may incur if they fail to notify the plan administrator of their eligibility for another employer-sponsored group health coverage or Medicare.

Over the next few months, employers may receive a form entitled "Request for Treatment as an Assistance Eligible Individual." The DOL published this form for the use by individuals who believe they are eligible for the subsidy, but who don't receive a notice. Therefore, an employer who receives this completed form should assess whether the individual is eligible for the COBRA subsidy. If so, the employer should stop collecting COBRA premiums from the individual for the subsidy period (or until the end of the individual's COBRA continuation period, if earlier) and refund any premiums already paid for any period from April 1, 2021.

The DOL also clarified the following:

- **Coverage start date:** Subsidy-eligible individuals can begin their coverage prospectively from the date of their election or choose to start their coverage as of April 1, if their qualifying event occurred on or before then.
- **Administrative fees:** The subsidy includes any COBRA administrative fees normally paid by qualified beneficiaries.
- **Reduction in hours:** A reduction in hours includes reduced hours due to a change in an employer's hours of operations, a change from full-time to part-time status, a temporary leave of absence, or an individual's participation in a lawful labor strike.
- **Involuntary termination:** An employee's voluntary termination does not qualify as an involuntary termination.
- **Eligibility for other coverage:** An individual who is eligible, even if not enrolled, for Medicare or group health coverage through a new employer's plan or a spouse's plan is not eligible for the subsidy.
- **Eligibility for excepted benefits:** Eligibility for excepted benefits (e.g., certain limited scope dental or vision benefits, accident insurance, etc.), a qualified small employer health reimbursement arrangement, or a health FSA does not affect subsidy eligibility.
- **State mini-COBRA:** ARPA has not changed the terms of and election periods for electing health coverage continuation under a state mini-COBRA-like laws. It merely entitles individuals to the premium subsidy. Therefore, depending on the state, those individuals who qualified for mini-COBRA before April 1 but failed to elect it might not be able to elect coverage now.
- **Special Marketplace enrollment:** The DOL confirmed that individuals whose COBRA subsidy expires may qualify for a special enrollment period on the Healthcare Exchange Marketplace.
- **Penalties for noncompliance:** Employers and multiemployer plans may be subject to an excise tax of up to \$100 per qualified beneficiary, \$200 per family, for each day the employer or plan fails to satisfy the COBRA subsidy requirements.

The DOL guidance did not address a number of open questions, including, for example, whether employers who voluntarily provide COBRA subsidies under a severance agreement can recoup their cost of coverage.

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