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# Benefit Updates & Compliance: Resource Guide

2021

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# Overview

With so much change in legislation and within the Benefits landscape, it can be hard to stay current with the most recent updates. The NCA team has compiled our information into a single resource to help you keep track of what you need to know to stay compliant and successfully manage benefits.

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## What is ARPA?

The American Rescue Plan Act of 2021 ("ARPA") was signed into law on March 11, 2021 by President Biden. As it pertains to COBRA, ARPA establishes a temporary, six month, 100% COBRA premium subsidy, plus the 2% administration fee.

This premium subsidy is for eligible individuals and their dependents who lost group health coverage due to involuntary termination, such as a layoff, reduction in force (RIF), or furlough, or reduction in hours.

The COBRA premium subsidy begins April 1, 2021 through September 30, 2021. The subsidy will end earlier than September 30th if:

- QB becomes eligible for another group health plan such as a plan sponsored by their spouse's employer or new employer
- QB reaches the end of the maximum COBRA continuation coverage period.

The ARPA subsidy will not extend a qualified Beneficiary's (QB) COBRA continuation coverage.

Click [here](#) to access the full legislation.



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# ARPA FAQs

## Who is eligible for an additional election opportunity?

A qualified beneficiary who has been identified as a potential AEI and who did not elect COBRA coverage when it was first offered prior to that date or who elected COBRA but is no longer enrolled may have an additional election opportunity.

## How long will premium assistance last?

The premium assistance is available for periods of coverage from April 1, 2021 through September 30, 2021.

The subsidy will end earlier than September 30th if:

- QB becomes eligible for another group health plan, such as a spouse's employer or a new employer
- QB reaches the end of the maximum COBRA continuation coverage period

## Which plans does the subsidy apply to?

The COBRA premium assistance applies to all group health plans sponsored by employers and unions subject to the COBRA rules under ERISA. They also apply to State or local governments subject to the continuation provisions under the Public Health Service Act. This includes Medical, Dental, Vision, and HRAs. FSAs are not eligible for the subsidy.

## Who qualifies as an Assistance Eligible Individual (AEI)?

AEIs are identified as a person who was involuntarily terminated (layoff, RIF, furlough), has had a reduction in hours, has been made a part-time status from full-time status, is taking a temporary leave of absence, and elects COBRA coverage.

AEIs are not eligible for other group health plan coverage or Medicare, and must be within their eligible COBRA period. ARPA states that any QB **eligible** for other group health plan coverage or Medicare is not eligible for the subsidy. (Note that **QBs do not have to be enrolled** in the other coverage.)

The subsidy is available to employees who did not elect COBRA coverage during their original election period as well as those who initially elected COBRA, but let their coverage lapse.

## Who is not subsidy eligible?

A person will not be eligible for the COBRA subsidy if they are:

- Eligible for other group health plan coverage
- Eligible for Medicare

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# ARPA FAQs

## What if a QB fails to notify the plan of eligibility for other coverage?

There is a \$250 penalty imposed on the QB who fails to notify the plan of eligibility for other coverage.

**TIP:** NCA sends a Confirmation of Continuing Coverage questionnaires quarterly, providing QBs an easy way to communicate eligibility changes

## What events do not count toward subsidy eligibility?

- Divorce
- Retirement
- Loss of Dependent Status
- Death of Spouse or Death of QB
- Voluntary Termination (quitting employment for any reason)
- Gross Misconduct

## How do I notify Assistance Eligible Individuals?

Plan administrators are required to begin notifying eligible individuals of the COBRA subsidy within 60 days of April 1, 2021. The deadline is May 31, 2021.

There are three types of notices that must be sent to AEIs

A notice of the extended COBRA election period must be sent to any AEI who had a qualifying event prior to April 1, 2021. This requirement does not include individuals whose maximum COBRA continuation coverage period (if COBRA had been elected or not discontinued) would have ended before April 1, 2021.

Plans must also provide AEIs with notice of expiration of subsidy, the date of the expiration, and that the individual may be eligible for coverage without any premium assistance through COBRA or coverage under a group health plan. The Notice of Subsidy Expiration must be provided 15-45 days before AEI's premium assistance expires.

This also has to work together with the outbreak period rules, which may give assistance eligible individuals the opportunity to elect unsubsidized coverage back to the date of the qualifying event.

## Where can I find additional FAQ information about ARPA and tax credits?

The IRS produced a 41 page, detailed FAQ to answer questions regarding the premium assistance for COBRA benefits. You can click [here](#) for a direct link to their FAQ document.

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# ARPA Key Takeaways

- **It is a 100% Subsidy:** This will allow eligible individuals to obtain COBRA continuation coverage for their health plan without paying premiums for a six-month period.
- **Specific Timeline and Eligibility:** The COBRA subsidy is only available for premiums from April 1 through September 30, 2021. In order to be eligible, individuals must be in their 18-month Federal COBRA Coverage Period.
- **Individuals Still Need to Elect COBRA:** Coverage is NOT automatic. Newly eligible individuals will not need to pay premiums, but they must still elect COBRA coverage in order to take advantage of the subsidy.
- **Employers are Responsible for Paying Premiums; Receive a Tax Credit:** Employers who sponsor a group health plan are responsible for paying health insurance carriers the premiums. They will be reimbursed 100% for the COBRA premiums through tax credits against certain payroll taxes. The federal government will reimburse the employer or insurer (for fully insured plans) for the cost of the subsidy, including COBRA administrative fees.
- **New and Previous Qualified Beneficiaries Might Be Eligible:** The subsidy is available for individuals who are or become qualified beneficiaries as a result of involuntary termination of employment or a reduction in hours. This might include individuals who:
  - o Become eligible for COBRA during the subsidy period
  - o Previously elected COBRA coverage and have paid premiums for prior months
  - o Have not elected COBRA coverage but are still eligible to elect COBRA
- **Eligible Individuals Need to be Notified:** Eligible individuals need to receive an updated notification regarding their rights to COBRA and the subsidy.
- **Individuals Could Elect to Change Coverage:** If an employer permits individuals to change coverage, the premium subsidy cannot exceed the cost of the coverage option the individual was in at the time of the qualifying event.
  - o Example: At the time of her layoff, Sally was enrolled in Plan A, and the premium cost \$400 per month. She has an opportunity to enroll in Plan B, but it costs \$600 per month. Her subsidy cannot exceed the original premium of \$400 per month.

## Sample Subsidy Example Outline:

- Impacted and eligible employees will be notified about their COBRA and subsidy eligibility. Newly eligible QBs will need to elect COBRA.
- NCA will work with our employer and carrier partners to ensure coverage is reinstated.
- NCA will continue to send reports to employers monthly, as per our usual service.
- Employers are now responsible for working with insurance carriers to pay monthly invoices and request tax credits from the government for the subsidized amounts.
- Employers remit payment to NCA for administrative fees due.

# Relief Deadlines

The Department of Labor (DOL) has issued guidance on the temporary extension of the COVID-19-related relief for COBRA and HIPAA special enrollment deadlines.

On February 26, 2021, [Notice 2021-01](#) stated that the Outbreak Period will not expire on March 1, 2021. The Notice further states that the Outbreak Period is still ongoing, and clarifies that individuals will have plan deadline time periods paused until the earlier of:

- One year from the date an individual was first eligible for relief (on or after 3/1/20), OR
- 60 days after the announced end of the National Emergency (end of the Outbreak Period).

In no case will a disregarded period exceed one year.

This means that since the National Emergency is still ongoing, the determination of when the outbreak period ends will need to be calculated based on an individual's event, never to exceed one year. In this case, simply add one year to the date by which action was originally required to be taken, absent the outbreak period. This is the new date by which action must be taken.

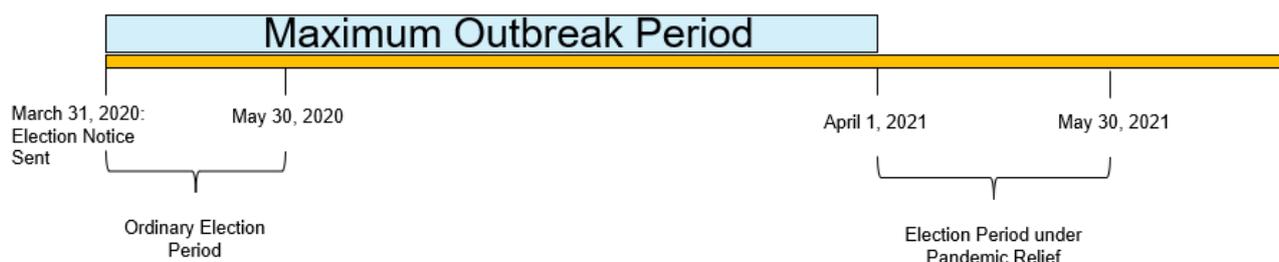
## Temporary Deadline Extensions

COBRA administration must continue to adhere to the following deadline extensions. Here is an example to help illustrate the guidance provided:

### COBRA Election Timeframe:

Molly's qualifying event date occurs on 5/1/20. In the absence of the Outbreak Period, she would have 60 days to elect COBRA, which is 6/30/20. Since the Outbreak Period is ongoing, she will have up to 6/30/21 to elect COBRA.

Remember that when the Outbreak Period ends, an individual's actionable deadline will be 60 days from the Outbreak Period end date, but will never exceed the one-year maximum extension.



# Relief Deadlines

## NCA's Response and Action Plan

The NCA COBRA administration procedures have been updated to comply with the new deadlines:

- All required COBRA notices have been updated to reflect these timelines
- All Qualified Beneficiaries (QBs) who lost coverage on or after March 1, 2020 will be sent a notice explaining the changes and extended deadlines
- This notice will include information with the alternative coverage options that are available to them (e.g.: Special Enrollment period through the Federal Exchanges is open through May 15th)

This new “individualized” or “event-by-event” application will add a lot of complexity to benefits administration. The DOL has acknowledged this, and has advised that plan sponsors (Employers) act in the best interest of plan participants. The Notice states that “in the case of plan fiduciaries that have acted in good faith and with reasonable diligence under the circumstances, the DOL’s approach to enforcement will be marked by an emphasis on compliance assistance, including allowance of grace periods and other relief.”

NCA will continue to process COBRA qualified beneficiaries through the Outbreak Period as normal, with the exception that we will accept election and payments within the allowed extension windows. Coverage will not expire until 30 days after the beneficiary has failed to make payment and can be reinstated back to the point of termination once payments are received.



# The CARES Act: Impact on Pre-Tax Benefits

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed into law on March 27, 2020, and contains important provisions that affect pre-tax accounts including HSAs, HRAs and FSAs.

The CARES Act expanded the use of FSAs, HSAs, and HRAs for certain types of healthcare products and services including:

- HSA-qualified health plans can now cover telehealth and other remote care service expenses below the HDHP statutory deductible limit, or at no or low-cost sharing, without affecting an account holder's ability to continue contributing to their HSA. ***This provision will last until December 31, 2021.***
- Over-the-counter drugs and medicines can be paid for or reimbursed through an FSA, HRA or HSA without a doctor's prescription.
- Menstrual care products are now considered a qualified medical expense and are eligible for payment or reimbursement through an FSA, HRA or HSA. All expenses incurred after December 31, 2019 qualify, and the provision has no expiration date.

An estimate of approximately 17,500 new OTC products became eligible with this change. These include OTC items that were removed from eligibility with the passage of the Affordable Care Act (ACA), as well as items that have been submitted for or rejected from eligibility since.

The OTC provisions are effective immediately and require no action on the part of employers or participants, unless the plan explicitly prohibits OTC products from the plan.

There are several other health-related provisions included in the CARES Act that allow for COVID-related testing, treatments and expansion of Medicare for certain Medical treatments and products.



A copy of the CARES Act executed legislation can be found [here](#).

# Consolidated Appropriations Act of 2021

With the passage of the Consolidated Appropriations Act of 2021 in December 2020, Congress allowed for additional flexibility with regard to Health Care Flexible Spending Accounts (FSAs), and Dependent Care Accounts. The law includes the following:

- **Unrestricted Carryover:** Employers can choose to allow participants a carry over unused health care or dependent care funds from 2020 and use it in 2021. Employers can allow for unused 2021 funds to carry over into 2022.
- **Extended 12-Month Grace Period:** Employers can adopt a 12-month grace period for unused benefits or contributions in health and dependent care FSAs for plan years ending in 2020 or 2021.
- **Allowances for Terminated Employees:** Employers can permit Health FSA participants who terminate during the 2020 or 2021 plan year to spend down their unused balances for expenses incurred through the end of the plan year in which the termination occurred, including any grace period.
- **Election Change without Qualifying Life Event:** Employers can permit a prospective change in election amounts for health and dependent care FSAs for plan years ending in 2021 without a corresponding change in status event (similar to Notice 2020-29).
- **Increased Age for Dependent Care:** The law allows employers to raise the last eligible age for children's dependent care to 13, from 12, for the 2020 plan year only.

These updates are permissive, not mandatory. If employers choose to implement any one or more of them, then the employer must amend their plan by no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective (if adopted for 2021, then must amend by December 31, 2022).

A link to the text outlining these new provisions can be found [here](#).



# Additional Allowances: DCA & PPE

## Increase to Dependent Care Flexible Spending Account Maximum

ARPA allows for an increase in the maximum amount under a Section 129 Dependent Care Assistance program from \$5,000 (\$2,500 married filing separately) to \$10,500 (\$5,250 married filing separately) **for the 2021 plan year only**. This provision is voluntary. Retroactive plan amendments are permitted if an amendment is adopted by the last day of the 2021 plan year and the plan is administered consistently with the terms of the amendment beginning on its effective date.

## PPE Eligible Expenses

The IRS announced in [Announcement 2021-7](#) that certain types of personal protective equipment (PPE) are now considered eligible expenses for FSAs when used for the primary purpose of preventing the spread COVID-19, and are treated as amounts paid for medical care under § 213(d) of the Internal Revenue Code (Code).

Examples of these expenses include: masks, hand sanitizer and sanitizing wipes.

This announcement is retroactive for any period beginning on or after 1/1/2020, so any PPE expenses incurred on/after 1/1/20 are eligible. NCA had previously determined after the pandemic broke that masks were eligible items, and we have reimbursed claims for masks since then. Claims for PPE items that were previously denied can be resubmitted for open plan years.

Keep in mind this change applies to protective equipment only. Vitamins and supplements taken for preventative protection will still require a letter of medical necessity to be eligible for reimbursement. Additionally, it might take merchants some time to update their IIAS systems with these products which would allow the NCA Benefits card to work at the point of purchase. We will honor and reimburse claims incurred when a participant files a manual claim with their receipt. Over-the-counter drugs and medicines remain eligible items.



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# Additional Resources

Click the links below for quick access to these resources:

## **IRS Notices:**

[Notice 2020-33](#) - Health FSA Carryover increase to \$550

[Notice 2021-31](#) - Employer Subsidy FAQ

[Announcement 2021-7](#) - PPE Eligible Items

[Sec. 214 Temporary Rules for Health and Dependent Care FSAs](#)

## **DOL Notices:**

[EBSA Subsidy Homepage](#)

[Information for Employers](#)

[Information for Workers & Families](#)

[Employee Subsidy FAQ](#)

[Employer Subsidy FAQ](#)

[Guide for Employers and Advisors](#)

[Notice 2021-01](#) - Relief Deadlines

## **NCA Notices & Resources:**

[Guidance on Continuation of Relief Periods](#)

[The American Rescue Plan Act: Impact on COBRA & Dependent Care](#)

[ARPA Webinar - Slides](#)

[ARPA Webinar - Recording](#)

## **Public Law:**

[CARES Act Legislation](#)

[Consolidated Appropriations Act 2021](#)

[ARPA](#) - American Rescue Plan Act