

COVID-19:  
The American Rescue Plan Act of 2021  
(ARPA)  
COBRA Subsidy Update

# BENECON

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This webinar should **not** be construed as legal or tax advice. The current pandemic is unprecedented. The regulations are changing on an almost daily basis. This webinar is not intended to serve as a comprehensive guide to all aspects of this pandemic. Every situation is unique and will require special attention.

**This is a highly complex and fast moving area and we strongly encourage groups to seek out the advice of their own accountants, legal counsel or other specialized professional to assist with compliance with all facets of this national emergency.**

# Agenda

- DOL Website
- ARPA Subsidy Review w/ New Guidance (What We Know vs. What We Don't Know)
- New Model Notices
- Benecon COBRA Administration Changes



This is my life now.

**COVID-19:  
The American Rescue Plan Act of  
2021  
(ARPA)**

**Refresher:**

**<https://attendee.gotowebinar.com/recording/4706661146994329864>**

# Updated COBRA Subsidy Guidance

# Department of Labor COBRA Subsidy Website

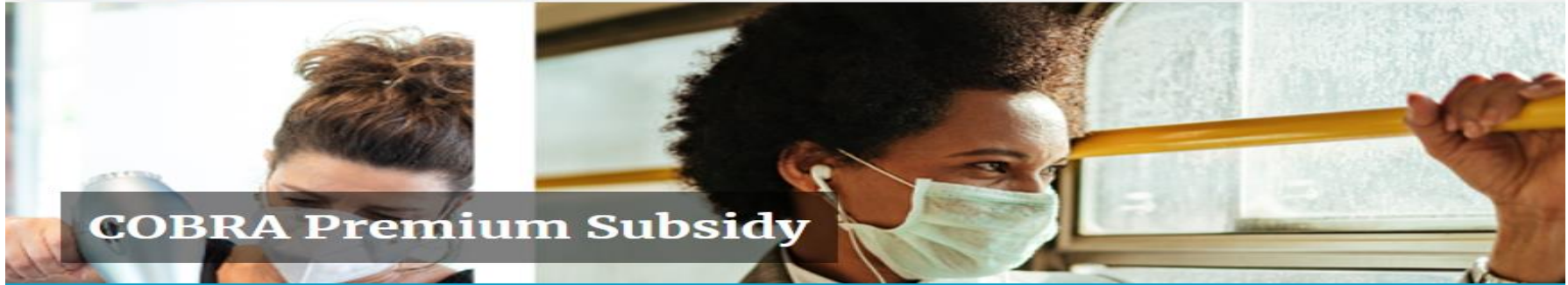
An official website of the United States government. [Here's how you know](#)

U.S. DEPARTMENT OF LABOR

## Employee Benefits Security Administration

TOPICS | WORKERS | EMPLOYERS AND ADVISERS | RESEARCHERS | RESOURCES | LAWS AND REGULATIONS | ABOUT | CONTACT

EBSA > Laws & Regulations > Laws > COBRA Continuation Coverage > COBRA Premium Subsidy



## For Workers and Families

[Collapse All](#)

### ▼ Frequently Asked Questions

- [COBRA Premium Assistance under the American Rescue Plan Act of 2021 FAQs](#)
- [General COBRA FAQs for Workers](#)

### ▼ Model Notices

- Model General Notice and COBRA Continuation Coverage Election Notice: [MS Word](#) | [PDF](#)
- Model Notice in Connection with Extended Election Period: [MS Word](#) | [PDF](#)
- Model Alternative Notice: [MS Word](#) | [PDF](#)
- Model Notice of Expiration of Premium Assistance: [MS Word](#) | [PDF](#)
- Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021: [MS Word](#) | [PDF](#)

<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra/premium-subsidy>

# COBRA Subsidy Website

- Launched on April 7
- Provides guidance in areas of general information, premiums, notices and individual information in the form of 21 FAQs
  - Individual (not employer) focused
  - LOTS of unanswered questions remain
- Houses the new Model Notices
- Keep checking this site new and updated guidance

**COBRA Subsidies:**

**What we know**

**vs.**

**What we don't know**



# Subsidy Period

## WHAT WE KNOW:

- General Subsidy Period
  - April 1, 2021 – September 30, 2021
- Termination of Subsidy Period
  - Subsidy Period will terminate on the earlier of:
    - September 30, 2021; **or**
    - The date when Assistance Eligible Individual's maximum COBRA period ends; **or**
    - Assistance Eligible Individual becomes eligible for other group health plan coverage or Medicare

## WHAT WE DON'T KNOW:

- Nothing (for now)

# Subsidy Payments

## WHAT WE KNOW:

- Subsidy Amount

- 100% COBRA Premium (including 2% admin.) for medical, dental and vision.
- Includes HRAs
- Does not include FSAs
- Not taxable to AEIs (Assistance Eligible Individuals)
- Paid by employer / plan sponsor who is reimbursed in the form of a credit / refundable overpayment against the Medicare component of Social Security taxes - reimbursed quarterly - can be advanced (talk to your accountant)
- Applicable to state continuation / Mini-COBRA
  - *\*\*\*\*Check with your carrier as to whether they will be paying on your behalf and requesting the reimbursement\*\*\*\**

## WHAT WE DON'T KNOW:

- Documentation required for reimbursement
- Method to obtain reimbursement

# Assistance Eligible Individuals (AEIs)

## WHAT WE KNOW:

- Involuntary Termination from Employment\*\*
  - Does not include voluntary termination / quit
  - Does not include term for willful misconduct (highly disfavored in COBRA)
  - Does not need to be COVID related
- Reduction in Hours
  - Can be involuntary or voluntary
  - Change in hours of business's operations
  - Change from full time to part time
  - Temporary leave of absence (as long as remained employed)
  - Participation in a lawful strike (as long as remained employed)
  - Does not need to be COVID related
- Includes Dependents
- Includes state continuation / Mini-COBRA
- AEIs cannot be eligible for other group health coverage or Medicare and it is their responsibility to notify their past employer if they become eligible. (Attestation)

# Involuntary Terminations – **WHAT WE DON'T KNOW**

- NEED. MORE. GUIDANCE.
- Until more guidance is released, work with outside legal counsel.
  - Employers will have to make the determination
  - Not brokers, administrators, Benecon, etc.



# 2009 ARRA Guidance – NOT CONTROLLING

- A severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. *The determination of whether a termination is involuntary is based on all the facts and circumstances.* For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that, absent such voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary.
- ARRA was clear: Involuntary termination from employment (not coverage)
- Included terminations for cause
- Termination FROM EMPLOYMENT for long illness or disability
- Resignation due to geographic location
- Did NOT include death or divorce

## 2009 vs. 2021 (ARRA vs. ARPA)

- ARRA was passed as part of a stimulus package by then President Obama in response to the 2008 recession.
- There was not a global pandemic to consider.
- Many lobbyists are pushing for guidance expanding ARRA guidance to allow CARES Act considerations in determining “*all the facts and circumstances.*”
  - Example: Employees who had to quit their jobs to stay home and take care of children because school was closed and remote work was not an option.

**WORK WITH YOUR LEGAL  
COUNSEL**

# Eligibility For Other Group Coverage

## WHAT WE KNOW:

- Not an AEI if eligible for another group health plan
  - New Employer
  - Spouse's Employer
  - Medicare
- Still qualify as an AEI
  - Medicaid eligible
  - Individual coverage (Marketplace or private)
  - Eligible for QSHRA
  - Eligible for FSA or Excepted Benefits
- Individuals and their dependents will have to attest to not being eligible for other group health coverage or Medicare
  - Attestation included in the Model Forms
  - Each subsidy recipient will have to attest
- Subsidy recipients are penalized for not disclosing / willfully misleading

# Eligibility For Other Group Coverage

## WHAT WE DON'T KNOW:

- Waiting periods
- Eligible for spouse's plan but has to wait until open enrollment
- Need more details





# Extended Election Period (2nd Bite at the Apple)

## WHAT WE KNOW:

- Any AEI who first became eligible for **FEDERAL** COBRA on or after October 1, 2019 (April 2021 would be the 18 month of coverage)
- Subsidy applies to not only new AEIs, but also those who earlier declined COBRA or elected and let it lapse
- Subsidy is only prospective for those newly eligible
- Does NOT apply to state continuation / Mini-COBRA

## WHAT WE DON'T KNOW:

- Carrier Cooperation



# Option to Change Coverage

## WHAT WE KNOW:

- Employers MAY allow AEIs to change elections to a lower cost option
- Applies to federal and state continuation
- Coverage cannot be changed to a QSEHRA or FSA or Excepted Benefits

## WHAT WE DON'T KNOW:

- Nothing (for now)

# State Continuation Coverage (“Mini-COBRA”)

## WHAT WE KNOW:

- Included in ARPA
- Does NOT change any requirement of a state continuation program
  - PA 9 months
  - VA 12 months
  - MD, FL 18 months
- NO 2<sup>nd</sup> Election Period (a/k/a no 2<sup>nd</sup> bite at the apple like federal)
- AEs can receive subsidies 4/1/21-9/30/21 if they elect
  - Can also switch to lower option if permitted by employer

## WHAT WE DON'T KNOW:

- Does ARPA allow 60 days to elect subsidy even if state continuation requires less days to elect COBRA? (ex: PA is 30 days to elect)

# New COBRA Model Notices

# Updated Model Notices & Who Receives Them

- **Model General Notice and COBRA Continuation Coverage Election Notice**
  - Federal AEs (April 1, 2021-September 30, 2021)
- **Model Notice in Connection with Extended Election Period**
  - Federal AEs (October 1, 2019 – March 31, 2021)
  - Due Date: May 31, 2021
- **Model Alternative Notice**
  - State Continuation / Mini COBRA AEs (April 1, 2021-September 30, 2021)
- **Model Notice of Expiration of Premium Assistance**
  - Due 15-45 days before subsidy expiration / end of maximum COBRA coverage period
- **Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021**
  - All federal and state AEs

# Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021

- Provides summary of rules for potential AEI
- Request for Treatment as an AEI for QB and Dependents
- Also contains the Participant Notification of Group Eligibility
- Summary of COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021



## Summary of the COBRA Premium Assistance Provisions under the American Rescue Plan Act of 2021

President Biden signed H.R. 1319, the American Rescue Plan Act of 2021 (ARP), on March 11, 2021. This law subsidizes the full COBRA premium for “Assistance Eligible Individuals” for periods of coverage from April 1, 2021 through September 30, 2021.

To be eligible for the premium assistance, you:

- **MUST** have a COBRA qualifying event that is a reduction in hours or an involuntary termination of a covered employee’s employment;
- **MUST** elect COBRA continuation coverage;
- **MUST NOT** be eligible for Medicare; **AND**
- **MUST NOT** be eligible for coverage under any other group health plan, such as a plan sponsored by a new employer or a spouse’s employer.\*

### ◆ IMPORTANT ◆

- ◇ If you do not elect to receive the premium assistance within 60 days of receipt of this form, you may be ineligible for the premium assistance.
- ◇ If you elect COBRA continuation coverage with premium assistance, and then become eligible for other group health plan coverage (not including coverage that is only excepted benefits (such as dental or vision coverage), a Qualified Small Employer Health Reimbursement Arrangement, or a health flexible spending arrangement), or if you become eligible for Medicare, you **MUST** notify the plan in writing. If you fail to provide this notice, you may be subject to a penalty of \$250 (or if the failure is fraudulent, the greater of \$250 or 110% of the premium assistance provided after termination of eligibility). You won’t be subject to the penalty if your failure to notify the plan is due to reasonable cause and not due to willful neglect.
- ◇ Employers that don’t satisfy COBRA continuation coverage requirements may be investigated by the Department of Labor and may be subject to an excise tax under the Internal Revenue Code.
- ◇ If you elect COBRA continuation coverage and are eligible for the premium assistance, you cannot claim the Health Coverage Tax Credit. You also cannot qualify for a premium tax credit to help pay for coverage through a Health Insurance Marketplace<sup>1</sup>, such as on HealthCare.gov, for any months that you are enrolled in COBRA continuation coverage with or without the premium assistance.

For general information on your plan’s COBRA continuation coverage, contact [enter name of party responsible for COBRA administration for the Plan, with telephone number and address].

For specific information on your plan’s administration of the ARP premium assistance or to notify the plan of your ineligibility to receive premium assistance, contact [enter name of party responsible for ARP Premium Assistance administration for the Plan, with telephone number and address].

For more information regarding ARP premium assistance and eligibility questions, visit:

<https://www.dol.gov/cobra-subsidy> or contact the Department of Labor at [askebsa.dol.gov](mailto:askebsa.dol.gov) or 1-866-444-EBSA (3272)

\* This restriction does not include coverage under a plan that provides only excepted benefits, a qualified small employer health reimbursement arrangement, or coverage under a health flexible spending arrangement.

<sup>1</sup> Health Insurance Marketplace<sup>®</sup> is a registered service mark of the U.S. Department of Health & Human Services.

To apply for ARP Premium Assistance, complete this form and return it to your plan or employer. If you have not yet elected COBRA continuation coverage, you may send this form along with your Election Form. If you do not complete this form and return it within 60 days of receipt, you may be unable to receive the premium assistance.

If you are already enrolled in COBRA, you may send this form in separately. If you choose to do so, send the completed "Request for Treatment as an Assistance Eligible Individual" to: *[Enter Name and Address]*

You may also want to read the important information about the rules for premium assistance included in the "Summary of the COBRA Premium Assistance Provisions Under the American Rescue Plan Act of 2021."

*[Insert Plan Name]*

**REQUEST FOR TREATMENT AS AN ASSISTANCE ELIGIBLE INDIVIDUAL**

*[Insert Plan Mailing Address]*

**PERSONAL INFORMATION**

Name and mailing address of employee (list any dependents on the back of this form)	Telephone number
	E-mail address (optional)

To qualify, you must be able to check 'Yes' for all statements.

1. The qualifying event was a loss of employment that was involuntary or a reduction in hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. I elected (or am electing) COBRA continuation coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. I am NOT eligible for other group health plan coverage (or I was not eligible for other group health plan coverage during the period for which I am claiming premium assistance).	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. I am NOT eligible for Medicare (or I was not eligible for Medicare during the period for which I am claiming premium assistance).	<input type="checkbox"/> Yes <input type="checkbox"/> No

I make an election to exercise my right to ARP premium assistance and attest that I meet the requirements for treatment as an Assistance Eligible Individual. To the best of my knowledge and belief all of the answers I have provided on this form are true and correct.

Signature → \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_ Relationship to employee → \_\_\_\_\_

**FOR EMPLOYER OR PLAN USE ONLY**

This request is:  Approved  Denied Specify reason in #3 below and return a copy of this form to the applicant.

**REASON FOR DENIAL OF TREATMENT AS AN ASSISTANCE ELIGIBLE INDIVIDUAL**

1. Loss of employment was voluntary.	<input type="checkbox"/>
2. Individual did not experience a reduction in hours.	<input type="checkbox"/>
3. Individual did not elect COBRA coverage.	<input type="checkbox"/>
4. Other (please explain)	<input type="checkbox"/>

Signature of employer, plan administrator, or other party responsible for COBRA administration for the Plan

→ \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_

Telephone number → \_\_\_\_\_ E-mail address → \_\_\_\_\_



**DEPENDENT INFORMATION** (Parent or guardian should sign for minor children.)

Name                      Date of Birth                      Relationship to Employee                      SSN (or other identifier)

a. \_\_\_\_\_

1. I elected (or am electing) COBRA continuation coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. I am NOT eligible for other group health plan coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. I am NOT eligible for Medicare.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The qualifying event was an involuntary termination or a reduction in hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No

I make an election to exercise my right to ARP premium assistance. To the best of my knowledge and belief all of the answers I have provided on this form are true and correct.

Signature → \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_ Relationship to employee → \_\_\_\_\_

Name                      Date of Birth                      Relationship to Employee                      SSN (or other identifier)

b. \_\_\_\_\_

1. I elected (or am electing) COBRA continuation coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. I am NOT eligible for other group health plan coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. I am NOT eligible for Medicare.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The qualifying event was an involuntary termination or a reduction in hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No

I make an election to exercise my right to ARP premium assistance. To the best of my knowledge and belief all of the answers I have provided on this form are true and correct.

Signature → \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_ Relationship to employee → \_\_\_\_\_

Name                      Date of Birth                      Relationship to Employee                      SSN (or other identifier)

c. \_\_\_\_\_

1. I elected (or am electing) COBRA continuation coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. I am NOT eligible for other group health plan coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. I am NOT eligible for Medicare.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The qualifying event was an involuntary termination or a reduction in hours.	<input type="checkbox"/> Yes <input type="checkbox"/> No

I make an election to exercise my right to the ARP premium assistance. To the best of my knowledge and belief all of the answers I have provided on this form are true and correct.

Signature → \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_ Relationship to employee → \_\_\_\_\_

This form is designed for plans to distribute to COBRA qualified beneficiaries who are not paying premiums pursuant to ARP so they can notify the plan if they become eligible for other group health plan coverage, or Medicare.

**Use this form to notify your plan that you are eligible for other group health plan coverage or Medicare and therefore not eligible for premium assistance under the ARP.**

Plan Name

**Participant Notification**

Plan Mailing Address

**PERSONAL INFORMATION**

Name and mailing address

Telephone number

E-mail address (optional)

**PREMIUM ASSISTANCE INELIGIBILITY INFORMATION – Check one**

I am eligible for coverage under another group health plan.  
If any dependents are also eligible, include their names below.

Insert date you became eligible \_\_\_\_\_

I am eligible for Medicare.

Insert date you became eligible \_\_\_\_\_

**IMPORTANT**

If you fail to notify your plan when you become eligible for other group health plan coverage or Medicare AND continue to receive COBRA premium assistance you may be subject to a penalty of \$250 dollars (or if the failure is fraudulent, the greater of \$250 or 110% of the amount of the premium assistance provided after termination of eligibility). You won't be subject to the penalty if your failure to notify the plan is due to reasonable cause and not due to willful neglect.

Eligibility for other coverage is determined regardless of whether you take or decline the other coverage.

However, eligibility for coverage does not include any time spent in a waiting period.

To the best of my knowledge and belief all of the answers I have provided on this Form are true and correct.

Signature → \_\_\_\_\_ Date → \_\_\_\_\_

Type or print name → \_\_\_\_\_

If you are eligible for coverage under another group health plan and that plan covers dependents you must also list their names here:

\_\_\_\_\_  
\_\_\_\_\_

# What if the employer and the QB do not agree on AEI status? – PROCEED WITH CAUTION

From the April 7 DOL Guidance:

DOL is committed to ensuring that individuals receive the benefits to which they are entitled under the ARP. Employers or multiemployer plans may also be subject to an excise tax under the Internal Revenue Code for failing to satisfy the COBRA continuation coverage requirements. This tax could be as much as \$100 per qualified beneficiary, but not more than \$200 per family, for each day that the taxpayer is in violation of the COBRA rules.

**WORK WITH YOUR LEGAL  
COUNSEL**

# Benecon COBRA Administration

(this section ONLY applies to  
those groups that use Benecon  
for COBRA Administration)

# Benecon COBRA Admin. - Identifying Assistance Eligible Individuals

- Benecon has already sent correspondence to all of our administration groups to assist in the identification of employees who were involuntarily terminated (including a reduction in hours) from October 1, 2019 – present
- If you have not responded, you need to respond **immediately**.
- If Benecon receives a Request for Treatment as an AEI and employer has identified individual as an AEI, then Benecon will approve and sign as administrator.
- If Benecon receives a Request for Treatment as an AEI and employer has not responded, or has indicated that individual is not an AEI, then Benecon will forward the request to the employer group for completion and signature.
  - If the employer continues to fail to respond within (5) business days, Benecon will assume that the individual is a proper AEI eligible for subsidies.

# Benecon COBRA Admin. - Identifying Assistance Eligible Individuals (cont.)

- Determination of AEI status must be made by the employer.
- Benecon cannot assist you in determining whether a QB is an AEI (except for as noted in Slide 29).
- No one has all of the answers until more guidance is released.
- Until then, you must work with your legal counsel to evaluate the facts and circumstances for each individual to assess your risk.

# Benecon COBRA Admin. - Notifications

- Benecon has revised all COBRA notifications and are already utilizing the new versions for all new state and federal AEIs w/ summaries. - *No additional charge to employer.*
- Benecon will be providing notifications to all past AEIs prior to May 31, 2021. - *No additional charge to employer.*
- Benecon will track end dates and provide notices of potential subsidy expirations to AEIs. - *No additional charge to employer.*
- Benecon is already in the process of sending updated Outbreak Period Notices and Marketplace Notices to current Qualified Beneficiaries as they approach their extension expiration dates.- *No additional charge to employer.*

# Benecon COBRA Admin. - Payments

- When an Assistance Eligible Individual elects COBRA, Benecon will apply a subsidy amount to the individual's account reflecting a paid through period of September 2021 (or the COBRA expiration date whichever comes first).
- The groups will not be sending any premium payments to Benecon.
- What about the 2% Admin. Fee?
  - The employer group will still need to advance the 2% COBRA Admin. fee, which will also be part of the tax credit reimbursement.
  - Benecon issues monthly disbursement reports reflecting monthly premium payments, which also include amounts due to Benecon. The 2% admin. fee due for each Assistance Eligible Individual will be reflected on this report.
  - For any Qualified Beneficiaries, that are not Assistance Eligible Individuals, Benecon will continue to retain the 2% admin. fees from the disbursements, as has been our practice.



# Benecon COBRA Admin. - Refunds

- What is Benecon doing with checks that are received from COBRA participants who are now eligible for the subsidy?
  - If a participant has already paid and Benecon has cashed and posted the premium:
    - Benecon has already sent the premium to the group, and it is the group's responsibility to refund the COBRA participant.
  - If a participant has already paid, but Benecon has not cashed and posted the premium:
    - Benecon will return the check to the participant.
- How does a group identify what COBRA participants are entitled to refunds?
  - On the Benecon COBRA portal under "Accounting Reports," you will choose "Subsidy Schedule." This report will identify any COBRA participants that are receiving a subsidy.
  - Once you identify the AEI, you can review the specific member's payment history to identify those entitled to a refund.

# Final Group Checklist

# So, Now What?

- Work with your COBRA Administrator!
  - Make sure someone is identifying AEIs back to October 1, 2019
- Ensure that your administrator is using the new notices for all new AEIs
- Ensure that your administrator is going to notify prior AEIs back to October 1, 2019 and that it will be done prior to May 31, 2021
- Confirm procedure for Requests for Treatment as an AEI
- Ensure that your administrator will be tracking and notifying AEIs upon expiration of subsidy periods / maximum COBRA periods
- Confirm if there are any additional charges for the additional notice requirements, postage, etc.

# So, Now What? (cont.)

- Decide if you are going to allow coverage changes
- Create internal processes for AEI identifications / approvals / denials
- Train internal staff to maintain all documentation of AEI identifications / approvals / denials and payments for reimbursements
- Work with your consultants, counsel and accountants
- Keep close watch for more guidance
  - Both legislative and operational (administrators and carriers)

# Be Patient!

- This is a major overhaul with ridiculously fast turnarounds and very little federal guidance.
- There will be additional guidance that may require some future tweaking to the processes.
- There are not answers to some of your questions.
- We're learning it right along with you.

# Moral of the Story?

Everything is fine.



This webinar should not be construed as legal or tax advice. The current pandemic is unprecedented. The regulations are changing on an almost daily basis. This webinar is not intended to serve as a comprehensive guide to all aspects of this pandemic. Every situation is unique and will require special attention.

**This is a highly complex and fast moving area and we strongly encourage groups to seek out the advice of their own accountants, legal counsel or other specialized professional to assist with compliance with all facets of this national emergency.**

Thank You  
And  
Stay Tuned!