



Administrators with a Solution

Volume 6, Issue 3

Biden Signs Stimulus Bill with 100% COBRA Subsidy Through September

The federal government will pay 100 percent of COBRA insurance premium for eligible employees who lost their jobs and for their covered relatives through September, allowing them to stay on their company-sponsored health plan, under the American Rescue Plan Act (<http://advocacy.shrm.org/wp-content/uploads/2021/03/American-Rescue-Plan-Act-FINAL-6.pdf>) (ARPA) that President Joe Biden signed into law on March 11.

When the Senate voted to pass the bill, it increased the government's subsidy to 100 percent of COBRA premiums for laid off workers and covered relatives from April 1 through September 30, 2021, up from an 85 percent subsidy in the House bill.

Employers will obtain the subsidy through a payroll tax credit against employers' quarterly taxes, and will be responsible for paying health insurance carriers for the premiums, explained Kathryn Bakich, Washington, D.C. – based national health compliance leader at Segal, an HR and employee benefits consultancy.

Both fully insured and self-insured group health plans subject to federal COBRA are eligible for the credit against their Medicare FICA payroll taxes, and must provide the COBRA premium subsidy to assistance eligible individuals who have elected COBRA coverage, starting April 1.

"If the credit exceeds the amount of payroll taxes due, the credit would be refundable when employers submit Form 941," their quarterly tax return, Bakich said. The credit could also be advanced under rules that will be set by the Treasury Department.

WHO IS ELIGIBLE?

Only assistance eligible individuals (AEIs) qualify for a subsidy, which excludes employees who voluntarily end employment. "An AEI is someone who, in the time period between April 1 and September 30, 2021, is eligible for COBRA coverage due to an involuntary termination (other than for gross misconduct) or a reduction in hours (<http://bakerlaw.com/alerts/faqs-american-rescue-plan-act-of-2021-cobra>) and elects such coverage." "An AEI no longer is eligible for a subsidy upon the earliest of his or her becoming eligible for other group health plan coverage (that is not an excepted benefit) or Medicare or the expiration of his or her maximum COBRA period."

AEIs are required to notify their group health plan if they become eligible for other ACA-compliant coverage during the subsidy period, after which the subsidy would end (even if the COBRA beneficiary does not enroll in the alternative coverage to which they become eligible), and they would be subject to

penalties if they fail to do so.

SIX MONTH PREMIUM SUBSIDY

The federal government's subsidy for COBRA coverage premium that assistance eligible employees would otherwise be required to pay will:

- **Begin on April 1, 2021.**
- **End on September 30, 2021.**

What is the premium subsidy period? The premium subsidy is available with respect to any premium owed for a period of COBRA coverage beginning on April 1, 2021 and ending on September 30, 2021. If an AEI has already paid the applicable premium for the month of April 2021, the AEI is entitled to a refund of the premium paid. The refund is due within 60 days of the date of payment.

Can the Premium Subsidy for an AEI end prior to September 30, 2021? Yes. Premium subsidies do not apply with respect to an AEI for months of coverage beginning on or after the first date an AEI is eligible for coverage under another group health plan (other than coverage for excepted benefits, a health care flexible spending account, or a qualified small employer health plan) or Medicare. Premium subsidies are also not available for any period following the maximum period of continuation coverage required under COBRA for the AEI.

Those who may be eligible for a subsidy include:

- A qualified beneficiary who is eligible for COBRA continuation coverage by reason of termination of employment (other than for gross misconduct) or a reduction in hours; and
- Elects COBRA coverage.

An assistance eligible individual would include not only the affected employee but also his/her spouse and eligible dependent children. An employee who voluntarily terminates employment would not be eligible for the subsidy. In this Client Alert, assistance eligible individuals refer to those who have experienced an "involuntary" termination of employment. Qualified beneficiaries who have experienced other types of qualifying events (such as divorce) are not assistance eligible individuals.

Assistance eligible individuals include any employee (and covered spouse and dependent children) whose involuntary termination of employment occurs during the subsidy period, or who has already elected and is paying for COBRA as of April 1, 2021. An assistance eligible individual also includes an individual whose maximum period of coverage has not expired and (a) did not elect COBRA when it was first offered, or (b) elected COBRA but dropped it. The individuals described in the preceding sentence have a "second bite of the apple" known as an "extended election period" to elect COBRA during the subsidy period. For example, if an employee was involuntarily terminated on March 31, 2020 with a COBRA coverage period of April 1, 2020 to September 30, 2021, the former employee would be able to elect 100% subsidized COBRA for the last six months of his/her maximum coverage period. If COBRA coverage is elected during an extended election period, it would be effective on April 1, 2021 – it would not relate back to the original qualifying event or the date COBRA was dropped.

PENALTY

An assistance eligible individual who elects subsidized COBRA and becomes eligible for another group health plan or Medicare during the subsidy period must notify the plan of such eligibility, in a time and manner to be specified by the DOL. If an assistance eligible individual fails to notify the plan, he/she is subject to a penalty of \$250 for each failure under Section 6720C of the Internal Revenue Code ("Code"). If the failure was fraudulent, the penalty is greater than (a) \$250 or (b) 110% of the premium assistance received after termination of eligibility for subsidized COBRA. The penalty can be waived if notice was not given due to reasonable cause and not willful neglect.

REVIEWING THE BASICS: COBRA COVERAGE

Most private-sector employers must offer COBRA health care continuation coverage if they sponsor a group health plan and had at least 20 full- or part-time employees (<https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/cobra-continuation-health-coverage-for-employers.pdf>) during the previous year.

Employers may require terminated workers who choose to keep their employer-sponsored health plan generally for up to 18 months to pay for COBRA coverage. COBRA can be extended to 29 months for people with disabilities, and up to 36 months if there is a second qualifying event during the initial continuation coverage period, such as the divorce or separation of the employee and spouse. Some states impose their own COBRA coverage requirements in certain circumstances.

Typically with COBRA, insurance premiums are limited to the full cost of the coverage plus a 2 percent administration charge. That cost, however, if not affordable for many newly unemployed workers.

During the pandemic, some employers chose to pay COBRA coverage for employees who were laid off or who lost group health plan coverage when they were furloughed or had their hours reduced.

WHO RECEIVES THE TAX CREDITS?

- If a group health plan is subject to federal COBRA, then the employer receives the tax credits, whether it's fully insured or self-funded, and pays the insurer or third party administrator (TPA) to subsidize coverage for AEIs that elect COBRA coverage through September 2021.
- If a self-funded plan is not subject to federal COBRA but the state requires continuation coverage, then the employer receives the tax credit and pays the insurer/TPA to subsidize coverage.
- If a fully insured plan is not subject to federal COBRA but the state requires continuation coverage, then the insurer receives the tax credits and is responsible for ensuring AEIs' continuation coverage at no cost.

ARPA NEW NOTICE REQUIREMENTS, as described below:

Election Notices

COBRA election notices for AEIs who become eligible to elect COBRA during the Subsidy Period either as amended or as a separate document must include:

- **The form necessary for establishing eligibility** for COBRA premium assistance.
- **The name, address and telephone number necessary to contact the plan administrator** and any other person maintaining relevant information in connection with premium assistance.
- **A description of the extended election period** provided by the legislation.
- **A description of the option to enroll in different coverage**, if adopted by the employer.

The ARPA directs the DOL to publish model notices within 30 days of the bill's enactment.

Initial COBRA notices must generally be provided within 14 days of the employer notifying the third-party administrator ("TPA") of a qualifying event. Therefore, if an AEI incurs an applicable qualifying event on the first day of the Subsidy Period, and the employer notifies the TPA of the qualifying event that same day, a COBRA notice with the special ARPA language must be provided by April 14. Accordingly, April 14 is the earliest date that the plan will be required to provide an AEI with an initial election notice, including the special ARPA requirements. Under ARPA, the DOL is required to provide a model initial election notice by April 10. Therefore, the DOL's model notice is scheduled to be released before the first special ARPA-modified notice will be required.

Termination Notices

Between 45 and 15 days prior to the expiration of the subsidy for any AEI, the group health plan must send the AEI a notice that includes the following:

- The date on which the subsidy will terminate, and
- Notice to the AEI that the AEI may be eligible for coverage without the subsidy via either COBRA or group health plan.

ARPA requires the DOL to issue Model Termination Notices by April 25. Although there may be some participants whose subsidy eligibility ends prior to such date, we believe that it should be reasonable for plan sponsors and providers to wait until the DOL issues model termination notices before drafting their own notices.

Employer Cost Recovery

During the COBRA subsidy period, an employer that sponsors an insured plan and has the right to claim the credit described below will presumably need to pay premiums to the insurer to keep coverage in effect for an assistance eligible individual. Further, an employer that sponsors a self-funded plan will need to pay claims without receiving a COBRA premium payment from an assistance eligible individual. The foregone premiums are recovered by a credit that is taken against the 1.45% Medicare portion of the FICA tax. The credit is claimed by:

- The employer maintaining the plan, for a single employer plan that is subject to federal COBRA or is self-insured;
- By the plan, for a multiemployer plan; or
- By the insurer for any other plan.

If an employer, plan, or insurer refunds a premium payment made by an assistance eligible individual during the subsidy period, the refunded amount can also be claimed as a credit.

The credit is refundable, so if the amount of premium assistance provided exceeds the tax owed in a

quarter, it can be refunded. The credit may also be advanced, under guidance to be issued by the IRS.

COBRA Coverage or Subsidized Marketplace Plans?

Through 2022, the ARPA expands access to federal subsidies for people who buy health insurance on the Affordable Care Act (ACA) marketplace, through Healthcare.gov (<http://www.healthcare.gov/>) or a state-run exchange, by eliminating the subsidy cutoff if a purchaser earns more than 400 percent of the federal poverty level, about \$51,520.

Instead, for those earning more than 400 percent of the poverty line, subsidies – technically, advanceable tax credits – will gradually decrease as income rises, limiting the cost of ACA plan premium contributions for silver (midlevel) health plans to no more than 8.5 percent of an individual or family's income.

Until it expires at the end of September, the 100 percent subsidy for COBRA premiums is likely to keep terminated employees enrolled in their employer-sponsored plan, benefit specialists said. Beginning in October, however, those who have not exhausted their 18 months of available COBRA coverage (or 29 months for people with disabilities) may want to compare the cost of maintaining health insurance under COBRA with the cost of purchasing an ACA marketplace plan, especially if they are now eligible for enhanced subsidies.

A point to remember: Active employees who are offered insurance through work are not eligible for premium subsidies through the ACA marketplace if their employer-sponsored coverage is considered afford and meets the ACA's minimum-value requirement.

SECUREONE ASSISTS OUR CLIENTS WITH THE 6 MONTH SUBSIDY

- Working with Employers to notify proper AEI.
- Employer must notify SecureOne of individual qualified as (AEI).
- SecureOne will send out updated notifications of the qualifying event under American Rescue Act of 2021,once the DOL has provided the proper guidelines and sample notification.
- SecureOne will collect the COBRA premiums.
- Employer (Plan Sponsor) is 100% responsible for informing SecureOne should AEI be eligible for coverage without the subsidy under either COBRA or a group health plan.

Sources: www.healthcare.gov
www.shrm.org
www.natlawreview.com

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