



SLEVIN & HART, P.C.

Benefits Update

New COBRA Premium Subsidy Under the American Rescue Plan Act

April 9, 2021

The American Rescue Plan Act of 2021 (“Act”), which was signed into law on March 11, 2021, provides for a temporary 100% COBRA premium subsidy for certain qualified beneficiaries from April 1, 2021 through September 30, 2021. In addition, the Act extends the COBRA election period for individuals who would have been eligible for the premium subsidy but did not elect, or chose to terminate, COBRA coverage prior to April 1, 2021.

Subsidy Eligibility and Length

The Act provides for a 100% COBRA premium subsidy between April 1, 2021 and September 30, 2021 for “Assistance Eligible Individuals,” which the Act defines as group health plan participants and their dependents who experience a loss in coverage as a result of the participant’s involuntary termination of employment or reduction in hours and who: (1) become eligible for, and elect, COBRA coverage on or after April 1, 2021 and before September 30, 2021; or (2) became eligible for COBRA before April 1, 2021 and whose period of COBRA coverage (generally 18 months) includes any month between April 2021 and September 2021, even if the individual did not initially elect COBRA. The Act does not define what constitutes an “involuntary” termination or reduction in hours.

The subsidy will end earlier than September 30, 2021 for anyone whose regular period of COBRA coverage ends before September 30, 2021 or who becomes eligible for coverage under any other group health plan or Medicare before September 30, 2021. Individuals must notify the plan if they become eligible for other coverage and failure to provide such notice will result in monetary penalties on the individual unless they can show that the failure was due to reasonable cause.

COBRA Election Period Extension

The Act also extends the COBRA enrollment period available to Assistance Eligible Individuals who are not enrolled in COBRA as of April 1, 2021. This includes individuals who never made a COBRA election or who previously made an election but later discontinued coverage. Such individuals will have a new 60-day opportunity to elect COBRA coverage. Coverage for individuals who elect COBRA during this extension period will begin April 1, 2021 and will terminate as of the end of the individual’s original COBRA continuation period.

The Act does not address how this extended election period operates in connection with the DOL's existing extension of certain deadlines due to COVID-19. Under the DOL's extension, effective March 1, 2020, the deadline for individuals to elect COBRA or make COBRA premium payments must, at a minimum, be tolled until the earlier of (a) one year from the date the individual was first eligible to elect COBRA or the date the premium payment was due; or (b) 60 days after the end of the federally-declared National Emergency.

Changing COBRA Elections

The Act provides that plans may, but are not required to, allow all Assistance Eligible Individuals to elect COBRA coverage under a benefit program offered by the plan sponsor that is different than the benefit program in which such individual was enrolled at the time coverage was lost. To be eligible for this election change, among other requirements, the premium for the different benefit program may not exceed the premium for the benefit program in which the individual was enrolled at the time active coverage terminated. If permitted by the plan, individuals may change their coverage election within 90 days of receiving notice of such option.

Plan Notice Requirements

No later than May 31, 2021, plans must provide a notice to all Assistance Eligible Individuals regarding the availability of the temporary COBRA subsidy, the extended election period, and, if applicable, the opportunity to enroll in a different benefit program. Plans also must revise the required notice of eligibility for all individuals who become entitled to elect COBRA coverage between April 1 and September 30, 2021, regardless of eligibility for the subsidy, to advise of the premium subsidy and, if applicable, the option to enroll in a different benefit program. The DOL is required to issue model notices for both purposes by April 10, 2021.

Plans must also notify Assistance Eligible Individuals who elect COBRA of the termination of their premium subsidy, between 15 and 45 days before the subsidy ends. Plans are not required to provide this notice if an individual's premium subsidy ends because the individual becomes eligible for other group health plan coverage or Medicare. The DOL is required to issue a model subsidy termination notice by April 25, 2021.

Reimbursement of Premium Amounts

Group health plans must treat Assistance Eligible Individuals who elect COBRA coverage as having paid the full amount of required premiums for the months of April through September 2021. If an Assistance Eligible Individual makes COBRA premium payments for periods of coverage between April and September 2021, the plan must refund such payment within 60 days.

While a plan is required to subsidize the cost of COBRA premiums during the subsidy period, plans may seek reimbursement from the government through a credit against quarterly payroll taxes. The Act mandates the issuance of additional guidance regarding a multiemployer plan's

ability to receive a credit for the COBRA premium amounts it subsidizes when it does not have employees or pay payroll taxes.

Please contact Slevin & Hart for more information about how the Act's COBRA provisions impact your plan.

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