

Health & Group Benefits

AN EMPLOYER BENEFITS UPDATE

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The American Rescue Plan Act of 2021 – Federal COBRA Subsidy

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The American Rescue Plan Act of 2021 (ARPA), signed into law on March 11, 2021 is a \$1.9 trillion stimulus package, meant to provide economic aid in response to the global coronavirus pandemic.

Effective April 1, 2021 through September 30, 2021, the federal government will subsidize premiums for COBRA coverage at 100%. In addition, the legislation extends the COBRA election period for individuals that would have been eligible for payment assistance but did not elect or discontinued COBRA coverage prior to April 1, 2021.

The intent of this article is to provide plan sponsors with information regarding the federal COBRA subsidy and its potential effects on plan sponsors and participants.

ELIGIBILITY AND GENERAL TERMS

Effective April 1, 2021, any covered participant that experiences loss of coverage in a COBRA-qualifying event (other than voluntary separation of employment) is eligible for a 100% premium subsidy for COBRA coverage for themselves and their eligible dependents, so long as they elect such coverage within 60 days of being notified of COBRA eligibility. Any participants that make COBRA payments while eligible for the federal COBRA subsidy must be reimbursed in full.

Plan sponsors that offer more than one health plan option may provide participants eligible for the federal COBRA subsidy the opportunity to elect COBRA coverage under a different plan than they were enrolled under prior to the COBRA-qualifying event. If allowed for by the Plan sponsor, participants can elect a different plan under COBRA so long as it is a plan option for participants at the time of election and the COBRA premium is equal to or less than the plan they were enrolled under prior to the COBRA-qualifying event. In addition, the plan selected may not be a qualified small employer health reimbursement arrangement or a flexible spending arrangement and may not only provide coverage for excepted benefits (such as limited scope dental and vision benefits and disability income insurance).

The federal COBRA subsidy will end for an eligible participant on the first day of the month following the earliest of:

- The date a participant becomes eligible for coverage under any group health plan or Medicare;
- The date of the expiration of COBRA coverage;
- For participants that gain coverage through the extended election period, the date of the expiration of their COBRA coverage had there been no extended election;
- September 30, 2021

ELECTION PERIOD EXTENSION

Under the ARPA, participants that experienced loss of coverage in a COBRA qualifying-event (other than voluntary separation from employment) and did not elect COBRA or elected COBRA but subsequently discontinued COBRA coverage prior to April 1, 2021, are also eligible for the federal COBRA subsidy and can enroll in COBRA coverage, provided their COBRA benefits would not have expired prior to April 1, 2021.

The election period extension begins April 1, 2021 and ends 60 days after the participant receives a COBRA eligibility notification from the plan sponsor. COBRA benefits for participants who take advantage of the election period extension would begin on April 1, 2021 to align with the beginning of the subsidy period.

Eligible participants that elect COBRA coverage under the election period extension are not allotted a full COBRA term beginning at the date of election. The term of their COBRA coverage begins with their original COBRA-qualifying event and initial notification from the plan sponsor.

NOTICE REQUIREMENTS FOR PLAN SPONSORS

Similar to the normal notification period, plan sponsors have 30 days to provide notice of eligibility for COBRA coverage to participants that experience loss of coverage in a COBRA-qualifying event after April 1, 2021. For participants that experienced loss of coverage in a COBRA-qualifying event prior to April 1, 2021 but qualify for the election period extension, plan sponsors must provide notice of eligibility for COBRA coverage within 60 days of April 1, 2021. Notices of eligibility for COBRA coverage must contain the following information:

- The availability of and the conditions to be eligible for the federal COBRA subsidy
- The ability to enroll for COBRA under a different plan option, if permitted
- The documents necessary to confirm eligibility for the federal COBRA subsidy
- Contact information for the plan sponsor or other contact for information regarding the federal COBRA subsidy
- A description of the extended election period
- A description of the obligation of qualified beneficiaries and associated penalties

In addition, the plan sponsor must notify COBRA participants that their eligibility for the federal COBRA subsidy will end no sooner than 45 days and no later than 15 days prior to the end of eligibility for the subsidy. This notice must state whether a participant is eligible to continue COBRA coverage without the federal COBRA subsidy.

The Secretary of Labor, within 30 days from enactment, is to issue model notices plan sponsors can use to notify eligible individuals of the availability of assistance and the extended COBRA enrollment period. The Secretary of Labor, within 45 days from enactment, is to issue model notices plan sponsors can use to notify COBRA participants of the expiration of the subsidy.

NOTICE REQUIREMENTS FOR PARTICIPANTS

Participants receiving the federal COBRA subsidy must provide notification to the plan sponsor if they become ineligible for the subsidy by becoming eligible for coverage under another group health plan or Medicare. Participants that fail to notify the plan sponsor in a timely manner will be charged a \$250 penalty unless they can prove that the failure to provide such notification was not intentional or had a reasonable cause. Participants who intentionally fail to notify the plan sponsor must pay a penalty to the federal government equal to the greater of \$250 or 110% of the federal COBRA subsidy provided after loss of subsidy eligibility. The Secretary of Labor is expected to establish a timeline for notification to the plan sponsor.

CLAIMING THE FEDERAL COBRA SUBSIDY

The federal COBRA subsidy is a refundable quarterly tax credit against the Medicare payroll tax. If the tax credit exceeds the Medicare payroll tax for any given quarter, the excess will be treated as an overpayment and may be credited against tax liabilities or refunded. In addition, the tax credit may be advanced using forthcoming forms and instructions from the Secretary of Labor.

The Department of Treasury and the Internal Revenue Service are expected to issue guidance soon regarding claiming the federal COBRA subsidy.

POTENTIAL IMPACT ON PLAN SPONSORS

In order to avoid paying potentially costly COBRA premiums, many COBRA eligible individuals may make the decision to defer their COBRA enrollment until they incur health claims that are more expensive than the COBRA premiums they would have owed for months of coverage that they deferred. This behavior is referred to as adverse selection. Adverse selection can result in higher plan costs than otherwise expected. Since the ARPA provides a premium subsidy not only for individuals that become COBRA eligible after April 1, 2021, but for COBRA eligible individuals that either did not elect or elected but discontinued COBRA coverage prior to April 1, 2021, plan sponsors may see increased adverse selection, as participants may be financially incentivized to apply for COBRA coverage long after they initially qualified. However, since up to six months of COBRA premiums will be subsidized at 100%, healthier individuals with lower claim amounts may elect COBRA coverage when they otherwise would not have. Increased COBRA coverage election by both higher cost and lower cost individuals could result in plan costs that are different from those used to set the COBRA premium rates.

The ARPA may result in an increased administrative burden for plan sponsors. Deferral of COBRA coverage may result in large claims being submitted for reimbursement long after they are incurred, and as discussed above, plan sponsors may see an increased number of participants electing COBRA coverage well after their initial COBRA qualifying event. The notice requirements described above may also necessitate additional administrative resources, particularly related to the end of eligibility for the federal subsidy, and for individuals that qualify for the election period extension. While model notices will be provided, the relatively short timeframe to produce the required notices may place a strain on plan sponsors.



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