Blog Post

New COBRA Obligations for Employers Included in Biden's $1.9 Trillion Stimulus

March 16, 2021
By Beth Alcalde

For employers with group health plans, COBRA obligations under President Biden's premiere $1.9 trillion stimulus legislation, the American Rescue Plan Act of 2021 (the Rescue Plan) are an early priority. The Rescue Plan was signed by the President on March 11, 2021. Below is an overview of the Rescue Plan's COBRA relief, which provides a 6-month, 100 percent premium subsidy for eligible employees who lose group health insurance as a result of either an involuntary termination or a reduction in hours.

The ARPA COBRA Subsidy

The Rescue Plan includes a 100 percent COBRA premium subsidy that will apply for a coverage period running from April 1, 2021, through September 30, 2021 (the Subsidy Term). This means that eligible qualified beneficiaries could receive up to 6 months of subsidized coverage, although the period may be shorter if the qualified beneficiary's COBRA continuation coverage period ends or if the person becomes eligible for any other group health plan coverage, including Medicare (regardless of whether the person declines that new coverage).

Eligibility

Under the Rescue Plan, the subsidy applies to "assistance eligible individuals." Such individuals are

Related People

Beth Alcalde

Related Work

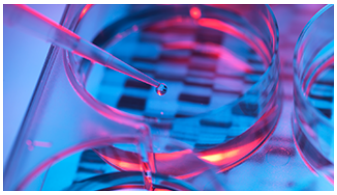
Employee Benefits and Executive Compensation
Labor and Employment
Tax

Related Offices

West Palm Beach

Coronavirus Resource Center

Visit the Resource Center



those who, during the Subsidy Term, are eligible for COBRA continuation coverage because of a qualifying event that was either an involuntary termination of employment or a reduction in hours. The subsidy appears to be available to all assistance eligible individuals who (1) become eligible during the Subsidy Term, (2) are currently enrolled in COBRA coverage and will remain enrolled during some or all of the Subsidy Term, (3) failed to elect COBRA coverage (but who would otherwise be in in their COBRA continuation window during the Subsidy Term if they had elected coverage), or (4) elected COBRA but subsequently dropped coverage (but who would otherwise be in in their COBRA continuation window during the Subsidy Term if they had not discontinued coverage). Assistance eligible individuals in the latter two categories are also entitled to a special enrollment period described below.

Special Election Period

Effective as of April 1, 2021, assistance eligible individuals who do not have a COBRA election in effect or who originally elected COBRA but discontinued COBRA coverage (as described in categories 3 and 4 in the previous paragraph) will have a special opportunity to elect coverage. These individuals may make a special election within 60 days of their receipt of a required notice informing them of their eligibility (as described below).

Employers May Permit Group Health Plan Enrollment Changes

COBRA rules generally provide that qualified beneficiaries are only permitted to elect to continue coverage that had been in effect on the day prior to their qualifying event. The Rescue Plan would give the option – but not the requirement – for employers to be more generous on this point. Specifically, the Rescue Plan includes a “plan enrollment option” that would permit plans to allow qualified beneficiaries to elect different coverage as long as it is equal to or

less than the value of their current group health plan coverage. If their plan permits, assistance eligible individuals may elect different coverage no later than 90 days after receiving notice of the enrollment.

Notice Requirements

As noted earlier, the Rescue Plan creates several new notice requirements. First, employers and plans must provide a general notice of subsidy availability to all assistance eligible individuals. This general notice should also include a statement regarding the option to make a plan enrollment change (if the plan permits this). Individuals who are eligible for the special 60-day election period must receive a notice about the special election period by May 31, 2021. Employers and plans must also provide a subsidy expiration notice within 45 to 15 days prior to the expiration of a subsidy. The Rescue Plan requires that the notices include specific content but provides that employers may either modify existing notices, add inserts to existing material or rely on the applicable model notices that will be issued by the DOL within 30 days of enactment.

COBRA Participant Obligation: Ongoing Communication with Former Employer

Notably, the Rescue Plan requires assistance eligible individuals to notify their COBRA group health plan administrator if they become eligible for separate coverage. Failure to do so could result in a $250 penalty per failure, and the penalty could be higher for an intentional or fraudulent failure to notify the plan. We expect that the DOL will provide additional guidance detailing communication obligations and specific penalty criteria for assistance eligible individuals.

Employer Payroll Tax Credit

Assistance eligible individuals will not pay the COBRA premium. Instead, employers and insurers will pay the premium and will receive a refundable

Medicare payroll tax credit. The quarterly credit may also be advanced, in accordance with forms and instructions to be released by the DOL. We expect additional guidance regarding the mechanics tied to premium payment and the credit.

Other COBRA Details in the COVID-19 Landscape

This section of our blog will provide a few other COBRA background facts and COVID-related reminders, should you be seeking more general COBRA information. Nothing in this section relates to the Rescue Plan and related stimulus developments.

Remember that under COBRA, covered employers with at least 20 employees and a group health plan must offer eligible employees and their dependents ("qualified beneficiaries") the option of continuing their coverage under the employer's group health plan, in the case of certain qualifying events. COBRA continuation coverage may last for up to 18 months (and can be extended for up to 36 months in certain circumstances) and qualified beneficiaries are typically responsible for paying the full cost of COBRA premiums.

As is the case with many programs, even before last week's developments, COBRA has been significantly impacted as a result of recent regulatory guidance aimed at providing COVID-19 relief:

- In April 2020, the Department of Treasury (Treasury) and the Department of Labor (DOL) issued joint guidance suspended certain benefit plan-related deadlines, including key COBRA deadlines. Under the joint guidance, certain plan sponsor and qualified beneficiary COBRA deadlines were put on hold during the "Outbreak Period" (which was defined as the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency due to COVID-19 or such other date announced in a

future notification). For more information, please refer to Akerman's Practice Update discussing the joint guidance.

- As noted in an Akerman HR Defense blog post on the topic, in May 2020 the DOL also released new model COBRA notices to provide an updated roadmap for group health plan administrators to remain compliant with COBRA's unforgiving notice requirements.
- Most recently, just as the DOL and Treasury's one-year statutory authority to suspend COBRA deadlines expired, the DOL issued EBSA Disaster Relief Notice 2021-01, confirming that deadlines that were suspended pursuant to the April 2020 guidance will only be disregarded until the earlier of: (1) one year from the date they were "first eligible for relief" (a concept further discussed in more detail in a recent HR Defense blog post); or (2) 60 days after the announced end of the National Emergency (that is, the end of the Outbreak Period, which has not yet occurred).

Going Forward – Employer Plan Sponsor Next Steps

So, what does it all mean? Employers should work with their COBRA administrators immediately to line up the premium payment mechanism to be used for coverage between April 1 and September 30, 2021, for certain COBRA participants. Additionally, while awaiting the release of model notices in the coming weeks, employers and their outside COBRA vendors can begin various tasks now, including (a) identifying known existing COBRA qualified beneficiaries who may fall into the category of receiving this subsidy and/or new special enrollment right, (b) confirming that their HR systems have a clear code of "involuntary terminations" that aligns with this COBRA subsidy requirement, (c) educating HR professionals about how to address questions from recently terminated and soon-to-be-terminated employees about the costs of COBRA coverage, and (d) deciding whether

to voluntarily allow COBRA qualified beneficiaries to elect a different health plan option than the one that the beneficiary had been enrolled in prior to their qualifying event.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.