AMERICAN RESCUE PLAN ACT INCLUDES TEMPORARY COBRA SUBSIDY AND INCREASED DEPENDENT CARE ACCOUNT LIMITS

Hodgson Russ Employee Benefits Alert
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On March 11, 2021, President Biden signed into law the American Rescue Plan Act ("Act"). The Act provides for two immediate and significant changes to employers who sponsor group health plans and dependent care assistant programs. The Act provides full subsidies and an extended election period for eligible individuals to elect COBRA coverage, and also allows a substantial increase in the dependent care account limits.

Full COBRA Subsidy Paid Through Employer Tax Credit

The Act includes a temporary 100% COBRA subsidy for qualified beneficiaries who are eligible for continuation coverage due to an involuntary termination of employment or reduction in hours resulting in a loss of certain employer-sponsored group health plan coverage (i.e., medical, dental, and vision). The subsidy is based on the amount of the applicable COBRA premium, including the 2% administrative fee that group health plans are permitted to charge.

An "assistance eligible individual" ("AEI") is a qualified beneficiary who is eligible for COBRA continuation coverage during the period beginning April 1, 2021, and ending September 30, 2021 due to an involuntary termination of employment or reduction of hours. Individuals who would be AEIs but for the fact that they did not timely elect or dropped COBRA coverage before April 1 are also eligible for subsidized coverage if they otherwise satisfy the requirements to be an AEI and are still within their maximum COBRA coverage period. Employers must allow such AEIs an extended period to make a COBRA election during the period beginning April 1 and ending 60 days after they are provided a mandatory notice regarding the subsidy and expanded election period.

The Act permits, but does not require, employers to allow AEIs to elect to enroll in different, lower cost group health plan options. The health care options must be offered to similarly-situated active employees and cannot consist of excepted benefits, health care flexible spending accounts, or qualified small employer health reimbursement arrangements. Employees must receive written notice of the different enrollment options and be permitted to enroll within 90 days of such notice.

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COBRA coverage elected during the extended election period will commence with the first period of coverage beginning on or after April 1, 2021. The subsidy may end sooner if the qualified beneficiary's maximum COBRA coverage period expires, or if sooner, when the AEI becomes eligible for other group health plan coverage or Medicare. AEIs are required to notify the employer if they cease to be eligible for the subsidy due to such other coverage.

The employer is required to provide three types of notices to AEIs:

- Notice of the availability of the COBRA premium subsidy;
- Notice of the extended election period; and
- Notice of the expiration of the COBRA premium subsidy.

First, employers must inform AEIs of the availability of the subsidy, and if offered, the option to enroll in different, lower-cost coverage. The notice must be provided to all individuals who become eligible to elect COBRA continuation coverage from April 1 to September 30, 2021. Within 30 days of enactment, the DOL has been instructed to issue model notices incorporating the specific content requirements set forth in the Act.

Second, employers must notify individuals who previously experienced an involuntary termination of employment or reduction in hours, and who did not timely elect COBRA or dropped COBRA, that they may still elect COBRA and receive subsidized coverage. These individuals have from April 1 to the date 60 days after they receive the required extended election period notice to elect COBRA.

Finally, employers must provide notice that the COBRA subsidy is scheduled to expire. The window for providing such notice is no more than 45 days and no less than 15 days before the date the subsidy will expire. No notice is required if the subsidy is expiring due to the individual's gaining coverage under another group health plan or Medicare.

Failure to provide any of these required notices will be treated as a failure of the COBRA notice requirements.

The COBRA subsidy period does not extend the maximum COBRA coverage period.

Many employers naturally have questions about the interplay between the Act and the relief from COBRA deadlines set forth in EBSA Disaster Relief Notice 2021-01, which was issued just seventeen days ago on February 26, 2021. Notice 2021-01 requires employers sponsoring group health plans to provide relief from deadlines for employees to make COBRA elections, and pay overdue COBRA premiums. Employers have been instructed to disregard the employee's failure to timely elect COBRA or make required premium payments, and to extend relief from such deadlines until the earlier of:

(a) 1 year from the date the person was first eligible for relief from a deadline; or

(b) 60 days after the announced end of the coronavirus National Emergency.

While Notice 2021-01 does not require supplemental notices, it seems likely that the Act's required extended election period model notice to be issued by the DOL may include language to address the agency's previously issued COBRA deadline relief guidance. For employers who have already issued supplemental election or premium notices based on Notice 2021-01, it appears probable that additional notices may be required to satisfy the detailed content requirements of the Act, and especially to inform AEIs about the temporary COBRA subsidies.

Employers will be reimbursed for COBRA subsidies through a refundable tax credit against the Medicare employment tax. If the amount of the premium subsidy credit owed to an employer exceeds the quarterly Medicare tax, the employer may seek a refund of the overpayment under Code Sections 6402(a) and 6413(b). Employers may claim an advance on the refundable tax credit in accordance with forms and instructions to be issued by the Department of Labor.

Dependent Care Flexible Spending Account Limit Increased

For plan years beginning after December 31, 2020, the Act permits employers to increase the dependent care flexible spending account limit from $5,000 to $10,500 for married couples (from $2,500 to $5,250 for married filing single). The change is optional, and employers choosing to increase the limit must amend their cafeteria plan documents by the end of the 2021 plan year.

Please contact Amy Walters (716.848.1481) or Mike Flanagan (716.848.1480) to discuss these developments in greater depth and how they affect your group health plans and dependent care flexible spending account programs.

American Rescue Plan Act (H.R. 1319).