Informational Bulletin

Changes Contained in the American Rescue Plan Act (ARPA)

March 2021

Significant Employee Benefit Changes Contained in the American Rescue Plan Act (ARPA)

SUMMARY:

Congress passed the $1.9 trillion COVID relief bill, the American Rescue Plan Act of 2021 (ARPA), which President Biden is expected to sign tomorrow. The bill includes significant employee benefits related provisions including a federal subsidy that will cover 100% of the cost of COBRA continuation coverage effective April 1, 2021 through September 30, 2021 for individuals who lost coverage due to an involuntary termination of employment or reduction in hours. The bill also includes an increase in the amount an employee can elect to contribute tax-free to a §129 Dependent Care Assistance Program (DCAP).

COBRA Subsidy

The most significant benefits-related provision in ARPA creates a federal subsidy that will cover 100% of COBRA premiums for certain Qualified Beneficiaries (QBs) who have federal or state continuation of coverage rights following an involuntary termination of employment or reduction in hours. As a result of the subsidy, the QBs will pay nothing toward COBRA premiums during the subsidy period. Employers with fully insured plans will pay the full premium due to the carrier, while those with self-funded plans will pay administrative fees and claims with no cost to the QB. Employers will then recover the premiums through a payroll tax credit.

Subsidy Coverage Details

The subsidy is available for QBs who become eligible for continuation coverage during the April 1 – September 30 timeframe, as well as those who previously became eligible for continuation coverage and are still within their maximum coverage period, due to involuntary termination of employment or a reduction in hours. The subsidy applies to continuation coverage of any group health plans subject to COBRA (e.g., medical, dental, vision, etc.), but not health flexible spending accounts (FSAs). In addition, the subsidy will also apply to state continuation, which is similar to federal COBRA, when due to an involuntary termination or reduction in hours.

"Second Bite at the Apple" but Election is Required

Individuals who previously experienced an involuntary termination or reduction in hours, but either did not elect COBRA or elected and have subsequently dropped COBRA coverage, and who are still within their COBRA maximum coverage period, must be given a second chance to elect COBRA to take advantage of the subsidy. If such individuals elect COBRA coverage within 60 days of being notified of the subsidy opportunity, coverage would be provided prospectively from the election date, not retroactively to the original COBRA event date. There could be a lapse in coverage between the original COBRA event and the new special election, as employers cannot require the QB to pay back premiums to take advantage of this second election opportunity. In no case is an individual eligible for more than the COBRA maximum coverage period measured from the original event date.

Plan Enrollment Option

ARPA also incudes a provision which permits, but does not require, plans to allow those who are subsidy-eligible to elect different coverage. This option only permits election of a plan with lower premiums than those for the coverage currently in effect or in effect as of the date of the qualifying event. Also, different coverage that consists solely of excepted benefits, qualified small employer health reimbursement arrangements, and health FSAs are excluded from being considered lower cost plan options.

Subsidy Expiration and Potential Penalties

As noted above, the subsidy expires September 30, 2021. However, it may expire sooner if the QB's maximum coverage period expires or when a QB becomes eligible for other group health plan coverage (including a health FSA) or Medicare. A QB receiving the subsidy is required to notify the employer (or administrator) upon becoming eligible for other coverage. Failure to provide notification could result in the following penalties:

- $250 for failure to provide notification in a timely manner (which is yet to be defined by the Secretary of Labor); or
- In the case of intentional failure to notify the employer, the greater of $250 or 110% of the premium assistance provided after termination of subsidy eligibility.

That said, no penalty will be imposed with respect to failure to notify if the failure was due to reasonable cause rather than willful neglect.

Notice Requirements

Existing COBRA election notices will need to be updated or supplemented with new language describing the subsidy. The rules include specific information that will need to be included in all COBRA election notices. There is also a new special notice that employers must send to any individuals who experienced a COBRA event due to an involuntary termination or reduction in hours and who are still within their 18-month maximum COBRA period. This notice informs these individuals of their right for a second chance to elect COBRA continuation coverage and must be sent to eligible individuals no later than May 31, 2021 (60 days after the date the subsidy goes into effect). Additionally, a notice must be sent to anyone receiving the subsidy informing them when the subsidy is about to end. This notice must be sent between 15 - 45 days prior to the expiration of the subsidy.

The agencies are required to provide model notices to help employers satisfy these notice requirements.

Employer Tax Credit

Employers will recover premiums not paid by COBRA QBs through a payroll tax credit, similar to the manner in which employers recovered mandatory Families First Coronavirus Response Act (FFCRA) paid leave costs. If the tax credit exceeds the amount of payroll taxes due for a particular period, the employer can apply for a refundable tax credit. In most cases, however, the employer will have more payroll taxes due for any particular period than the amount of credit they can claim for lost COBRA premiums.

Coordination with Health Coverage Tax Credit (HCTC)

The HCTC is generally available to individuals eligible for Trade Adjustment Assistance and retirees receiving PBGC pension benefits who lost their employer-sponsored health plan coverage. However, individuals who receive the COBRA subsidy are not eligible for the HCTC for any period of coverage during which the subsidy was received.

Dependent Care Assistance Program (DCAP) Increase

For 2021 only, ARPA increases the amount which may be elected tax-free through a §129 Dependent Care Assistance Program (DCAP) from $5,000 to $10,500 (or from $2,500 to $5,250 for individuals who are married but filing separately). Employers who choose to increase the DCAP maximum under the plan they sponsor will need to amend their DCAP plan by the end of the 2021 plan year to allow for this increased amount. It is unclear whether amounts from a 2020 carryover or grace period would count toward the total 2021 amount that may be reimbursed on a tax-favored basis.

Summary

The new COBRA rules obviously present an administrative challenge to employers and administrators, and it is expected that many individuals will take advantage of this opportunity to acquire health insurance at no cost. We expect the regulatory agencies to release some additional guidance and model notices, but with the short timeframe, it may come in the form of FAQs and informal guidance rather than regulations. Employers should coordinate with their COBRA administrators to ensure timely compliance with the COBRA subsidy requirements. In addition, employers who want to offer an increased DCAP election limit for 2021 should work with their administrators to adjust contribution limits and reimbursements, communicate the ability to increase elections to employees as soon as possible, and ensure plan amendments are made by the end of the 2021 plan year.

This legislative brief has been issued in partnership with Benefit Comply. For more information, please email us at info@kapnick.com or call at 888.263.4656.