

The American Rescue Plan Act of 2021 (ARPA): Impact on COBRA and Dependent Care

Overview of ARPA:

The American Rescue Plan Act of 2021 (“ARPA”), which was signed into law by President Biden on March 11, 2021, includes an opportunity for subsidized COBRA coverage for a six-month period from April 1 through September 30, 2021 for eligible employees and their dependents, who experience a loss of group health coverage due to involuntary termination or reduced hours of employment.

The Act creates a premium subsidy for federal and state COBRA coverage for “assistance eligible individuals,” including any employee or dependent who loses group health plan coverage due to an involuntary termination of employment or because of a reduction of hours. However, **COBRA subsidies are not available to individuals who are eligible to enroll in another group health plan (other than excepted benefits coverage), a flexible spending arrangement, a qualified small employer health reimbursement arrangement, or Medicare. Individuals who qualify for COBRA because of voluntary termination, retirement, divorce, loss of dependent status or death are not subsidy-eligible.** Individuals who fail to notify their health plan that they are no longer eligible for the COBRA subsidy face financial penalties.

The subsidy is available to employees who did not elect COBRA coverage during their original election period, as well as those who initially elected COBRA but let their coverage lapse. These individuals must be offered an additional window of at least 60 days to elect COBRA coverage. Since COBRA election deadlines have been extended during the pandemic as a result of the DOL and IRS deadline guidance, many individuals are still within their original COBRA election periods. However, this special election opportunity allows these individuals to make a *prospective* COBRA election for the period beginning April 1, 2021, without requiring payment of premiums retroactive to the original loss of coverage, which is a departure from the normal COBRA rules. The maximum COBRA period is not extended in this case. It is still counted from the date of the original qualifying event.

The premium subsidy applies for any period of coverage during the period April 1, 2021 through September 30, 2021 (the Period of Coverage), subject to otherwise applicable maximum periods of coverage under COBRA. Individuals who are eligible for and elect COBRA coverage for the Period of Coverage are not required to pay the COBRA premiums they would ordinarily be responsible for during the Period of Coverage. For self-insured plans, the COBRA premium is covered by the employer and reimbursed through a payroll tax credit. For fully insured plans, the tax credit is claimable by the insurer. This subsidy will not count towards an individual’s gross income.

The availability of the COBRA subsidy does not extend the availability of COBRA continuation coverage itself. This means that an individual can apply the COBRA subsidy through September 30, 2021 to COBRA continuation coverage, but only if they would otherwise have been eligible for coverage. For example, if an individual’s COBRA continuation coverage is set to expire in July 2021, ARPA does not require it to be extended through the end of September simply because the subsidy is available.

Plan Enrollment Option

The Act also provides for a “Plan Enrollment Option,” which may permit assistance eligible individuals to change coverage to a lower-cost option within 90 days of receiving the required employer notice, provided the plan sponsor (Employer) determines to permit such change, the premium for the lower-cost option is less than the premium for the coverage option in which the individual was enrolled at the time the COBRA qualifying event occurred, the lower-cost option is offered to similarly situated employees, and the lower-cost option provides more than limited health coverage (coverage other than coverage providing only excepted benefits, qualified small employer health reimbursement arrangement coverage, or flexible spending arrangement coverage).

Coordination of COBRA Premium Subsidy and Extension of COBRA Deadlines

Employers must coordinate compliance with the Act's COBRA premium subsidy provisions and the COBRA extension deadline relief provided in 2020 in response to the COVID-19 pandemic and revised at the end of February 2021. This relief provides that COBRA deadlines that otherwise would occur during the "outbreak period" (beginning March 1, 2020 and ending 60 days after the announced end of the presidentially declared national emergency) must be tolled until the earlier of one year from the date the deadline otherwise would have applied or the end of the outbreak period.

Notifying Eligible Individuals

Plan administrators are required to begin notifying eligible individuals of the COBRA subsidy within 60 days of April 1, 2021. The DOL is required to issue sample COBRA notices addressing the subsidy. Additional guidance on various issues related to the subsidy is expected in the next few weeks. Notices will address the availability of the new subsidies, the option to enroll in different coverage as available, the extended period to enroll in COBRA continuation coverage, and the expiration of the premium assistance.

Increase to Dependent Care Flexible Spending Account Maximum

ARPA allows for an increase in the maximum amount under a Section 129 Dependent Care Assistance program from \$5,000 (\$2,500 married filing separately) to \$10,500 (\$5,250 married filing separately) **for the 2021 plan year only**. This provision is **voluntary**. Retroactive plan amendments are permitted if an amendment is adopted by the last day of the 2021 plan year and the plan is administered consistently with the terms of the amendment beginning on its effective date.

Key Takeaways About the COBRA Subsidy:

- **It is a 100% Subsidy:** This will allow eligible individuals to obtain COBRA continuation coverage for their health plan without paying premiums for a six-month period.
- **Specific Timeline and Eligibility:** The COBRA subsidy is only available for premiums from April 1 through September 30, 2021. In order to be eligible, individuals must be in their 18-month Federal COBRA Coverage Period.
- **Individuals Still Need to Elect COBRA:** Coverage is NOT automatic. Newly eligible individuals will not need to pay premiums, but they must still elect COBRA coverage in order to take advantage of the subsidy.
- **Employers are Responsible for Paying Premiums; Receive a Tax Credit:** Employers who sponsor a group health plan are responsible for paying health insurance carriers the premiums. They will be reimbursed 100% for the COBRA premiums through tax credits against certain payroll taxes. The federal government will reimburse the employer or insurer (for fully insured plans) for the cost of the subsidy, including COBRA administrative fees.
- **New and Previous Qualified Beneficiaries Might Be Eligible:** The subsidy is available for individuals who are or become qualified beneficiaries as a result of involuntary termination of employment or a reduction in hours. This might include individuals who:
 - Become eligible for COBRA during the subsidy period
 - Previously elected COBRA coverage and have paid premiums for prior months
 - Have not elected COBRA coverage but are still eligible to elect COBRA
- **Eligible Individuals Need to be Notified:** Eligible individuals need to receive an updated notification regarding their rights to COBRA and the subsidy.
- **Individuals Could Elect to Change Coverage:** If an employer permits individuals to change coverage, the premium subsidy cannot exceed the cost of the coverage option the individual was in at the time of the qualifying event.
 - **Example:** At the time of her layoff, Sally was enrolled in Plan A, and the premium cost \$400 per month. She has an opportunity to enroll in Plan B, but it costs \$600 per month. Her subsidy cannot exceed the original premium of \$400 per month.

Sample Subsidy Example Outline:

- Impacted and eligible employees will be notified about their COBRA and subsidy eligibility. Newly eligible QBs will need to elect COBRA.
- NCA will work with our employer and carrier partners to ensure coverage is reinstated.
- NCA will continue to send reports to employers monthly, as per our usual service.
- Employers are now responsible for working with insurance carriers to pay monthly invoices and request tax credits from the government for the subsidized amounts.
- Employers remit payment to NCA for administrative fees due.