

CHALLENGES IN OFFERING COBRA IN 2021 WEBINAR

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AGENDA

- COBRA Premium Assistance
- Extensions of the deadlines under the National Emergency
- Take ways and Conclusions
- Common Questions
- Participant Questions

PREMIUM ASSISTANCE

PREMIUM ASSISTANCE

- On March 11, 2021 the President Biden signed into law the American Rescue Plan Act of 2021.
- This law may provide eligible COBRA participants an opportunity to receive:
 - assistance in paying for his or her COBRA premiums or
 - a second chance for electing COBRA coverage.
- If an individual is eligible for assistance in paying a COBRA participant's COBRA premium, he or she will not pay anything for of the monthly cost of premium for group health coverage under COBRA or state continuation coverage.

PREMIUM ASSISTANCE

- **What premium assistance is provided?**
 - If eligible, individuals will receive assistance with 100% COBRA premium for a period of up to six months beginning on April 1, 2021.
 - This includes the 2% administrative fee.

PREMIUM ASSISTANCE

- **Who is considered eligible for this premium assistance?**
 - Any individual who is a COBRA qualified beneficiary who is eligible for COBRA due to a reduction in hours or an involuntary termination of employment (other than for gross misconduct) and who elects COBRA coverage will be eligible for the premium assistance.

PREMIUM ASSISTANCE

- **Would COBRA coverage for an employee's spouse and/ or other dependents be eligible for premium assistance?**
 - Yes. The premium assistance applies not only the employee who lost coverage due to a reduction in hours or an involuntary termination (other than for gross misconduct) , but also to any other qualified beneficiaries who were covered through the employee and lost coverage as a result of the employee's reduction in hours or an involuntary termination of employment (e.g., spouse, children).

PREMIUM ASSISTANCE

- **For what period does the premium assistance apply?**
- It applies for COBRA coverage during the period from April 1, 2021 through September 30, 2021.

PREMIUM ASSISTANCE

- **To what coverages does premium assistance apply?**
 - It applies to all group health plan coverage (e.g., medical, dental, vision, employee assistance program), except for health care flexible spending account coverage.

PREMIUM ASSISTANCE

- **How will the employer be paid for providing the premium assistance?**
 - For employers who maintain group health plans, the premium assistance will be delivered through the employer paying COBRA premiums to the insurance carrier (or covering the cost of providing COBRA coverage under a self-insured plan) and then taking a payroll tax credit.
 - Plan sponsors will treat the subsidy as a credit against the employer's share of Medicare tax under Internal Revenue Code Section 3111(b).
 - If the credit exceeds the taxes owed for a quarter, the excess will be refundable.

PREMIUM ASSISTANCE

- **Does the employer have to provide an additional election opportunity to those eligible individuals who either did not elect **COBRA** coverage or discontinued **COBRA** coverage?**
 - Yes. An additional COBRA election opportunity must be provided for any eligible individuals who either do not elect federal COBRA coverage, but would have been eligible for premium assistance, or who had elected federal COBRA coverage previously, but discontinued COBRA coverage before April 1, 2021.
 - Employers are required to provide notices to these eligible individuals.

PREMIUM ASSISTANCE

- **Does the employer have to provide an additional election opportunity to those eligible individuals who either did not elect COBRA coverage or discontinued COBRA coverage?**
 - This special enrollment right must only be offered to those who is eligible for COBRA due to a reduction in hours or an involuntary termination of employment.
 - Please note that individuals who discontinued COBRA coverage do not have to be assistance eligible in order to take advantage of this extended election period.

PREMIUM ASSISTANCE

- **Does the employer have to provide an additional election opportunity to those eligible individuals who either did not elect COBRA coverage or discontinued COBRA coverage?**
 - Eligible individuals may elect COBRA coverage during the period beginning on April 1, 2021 and ending 60 days after the date on which they are provided notice by the employer/plan administrator as required.
 - This elected COBRA coverage elected begins on or after April 1, 2021 and does not extend beyond the maximum period of COBRA coverage that would have been required if the individual had elected COBRA at the time of the original event (or had not discontinued coverage that was elected at that time).

PREMIUM ASSISTANCE

- **When can the premium assistance be terminated?**
 - An individual ceases to be an eligible for premium assistance for months of coverage that begin on or after the earlier of:
 - The first date the individual is eligible for coverage under Medicare or any other group health plan (other than coverage that is only “excepted benefits,” coverage under a health flexible spending account, or coverage under a qualified small employer health reimbursement arrangement), or
 - The date following the expiration of the normal maximum COBRA period, which generally would be 18 months from the qualifying event.

PREMIUM ASSISTANCE

- **When can the premium assistance be terminated?**
 - For an individual who did not originally elect COBRA or who originally elected but then discontinued COBRA coverage, this period is measured from what would have been the beginning of the COBRA coverage period if the individual had elected when originally eligible or had not discontinued COBRA (in other words measured by reference to a reduction in hours or an involuntary termination of employment that caused the loss of coverage).

PREMIUM ASSISTANCE

- **Can an employer give an eligible individual the option to change coverages?**
 - Yes. An employer can allow an assistance eligible individual who are enrolled in coverage under the employer plan to change to a different coverage option offered under the plan.
 - The election to change coverage options must be made by the individual no later than 90 days after the date of notice of the right to change options is provided to the individual.
 - The premium for the new coverage option must not exceed the premium for the coverage in which the individual was enrolled at the time of the reduction in hours or involuntary termination of employment, and the new coverage option must be coverage that is offered to similarly situated active employees at the time the election to change is made, and cannot be coverage that provides only “excepted benefits,” a flexible spending account, or a qualified small employer health reimbursement arrangement.

PREMIUM ASSISTANCE

- **What are the new required notice requirements?**
 - The government agencies are required to issue model notices within 30 days of ARPA's enactment.
 - The following new notice requirements are imposed on employers/plan administrators and on individuals:
 - **Additional Required Information for COBRA Election Notices.** COBRA election notices provided to individuals who become eligible to elect COBRA coverage during the period between April 1, 2021 and September 30, 2021 must include additional information regarding the premium assistance.
 - This additional information can be incorporated into the normal election notice or can be provided by including a separate document with the normal election notice.

PREMIUM ASSISTANCE

- **What are the new required notice requirements?**
 - The notice must include all of the following additional information:
 - The forms necessary for establishing premium assistance;
 - The name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with premium assistance;
 - A description of the extended election period;
 - A description of the individual's obligation to provide notice if the individual becomes eligible for other group health coverage or Medicare, and of the penalty for failure to provide such notice (see below);
 - A description “displayed in a prominent manner” of the individual's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and
 - If the employer has chosen to offer the optional plan coverage option change, a description of that option.

PREMIUM ASSISTANCE

- **What are the new required notice requirements?**
 - **Notice of Extended Election Period.**
 - For individuals who became entitled to elect COBRA before April 1, 2021, the plan administrator must provide notice to the individual no later than May 31, 2021 (60 days after April 1, 2021).
 - The notice must satisfy the requirements described above.
 - This notice must be sent to individuals who are eligible for premium assistance, individuals who would be assistance eligible if they had a COBRA election in effect on April 1, 2021, and individuals who had elected COBRA previously but discontinued COBRA before April 1, 2021 (whether or not assistance eligible).

PREMIUM ASSISTANCE

- **What are the new required notice requirements?**
 - **Notice of Expiration of Premium Assistance.**
 - Between 45 days and 15 days before the premium assistance period ends for an individual (not including premium assistance that ends because the individual becomes eligible for other group health plan coverage or Medicare), the plan administrator must provide written notice to the individual in “clear and understandable” language that premium assistance for the individual will “expire soon” and include prominent identification of the date of such expiration and that the individual may be eligible for continued COBRA without premium assistance or coverage under a group health plan.

PREMIUM ASSISTANCE

- **What are the new required notice requirements?**
 - **Notice by Individual.**
 - An individual ceases to be eligible for premium assistance for months of COBRA coverage that begin on or after the date the person is eligible for Medicare or coverage under any other group health plan (other than coverage that is only “excepted benefits,” coverage under a health flexible spending account, or coverage under a qualified small employer health reimbursement arrangement).
 - An assistance eligible individual must notify the group health plan of such eligibility “in such time and manner as may be specified by the Secretary of Labor.”
 - A new provision has been added to the Internal Revenue Code to impose a \$250 penalty on an individual who fails to provide such notice, except where the failure was due to reasonable cause and not willful neglect.
 - The penalty may be increased where the failure to provide notice was fraudulent.
 - In that case, the penalty is the greater of \$250 or 110% of the premium assistance provided to the individual after the individual’s eligibility ended due to the other coverage.

EXTENSIONS OF DEADLINES UNDER THE NATIONAL EMERGENCY

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **What actions were taken by the Federal Government to toll or suspend certain deadlines?**
 - Employers are facing uncertainty as to the expiration of the COVID-19 relief the U.S. Department of Labor (DOL) and Internal Revenue Service (IRS) issued in a joint guidance on May 4, 2020.
 - The joint guidance requires employee benefit plans to toll, or suspend, certain deadlines during the “Outbreak Period,” which the guidance defines as the period beginning on March 1, 2020. and ending on the date that is “60 days after the announced end of the National Emergency or such other date announced by the [departments].”
 - As noted in the joint guidance, the DOL’s and IRS’s statutory authority permits only a one-year extension of these deadlines.

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **What deadlines were suspended or extended?**
 - The deadlines that are subject to the suspension or extension during the Outbreak Period include the following:
 - The period within which special enrollment in the employer's group health plan must be requested (for example, the deadline to enroll a new spouse or child);
 - Deadlines related to continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), including the 60-day election period, the timing of payments for COBRA continuation coverage, and the period within which individuals must notify the plan of a second COBRA qualifying event or determination of disability;
 - The date by "which individuals may file a benefit claim under the plan's claims procedure" (often 365 days from the date the claim was incurred);

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **What deadlines were suspended or extended?**

- The deadlines that are subject to the suspension or extension during the Outbreak Period include the following:
 - The date by which claimants may file an appeal of a denied claim under the plan's claims procedure (often 180 days from the date they receive notice of claim denial);
 - The four-month period within which claimants in a non-grandfathered group health plan “may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination”; and
 - The date by which a claimant in a non-grandfathered group health plan “may file information to perfect a request for external review upon a finding that the request was not complete” (the later of the original four-month period or 48 hours after receiving notice of the incomplete filing).

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **How is the one-year limit applied?**

- In EBSA Disaster Relief Notice 2021-01, the Department of Labor (DOL) has issued a critical interpretation of prior guidance that extended certain deadlines for employee benefit plans, participants.
- Under the new notice, the deadlines that are subject to the relief under the prior guidance are extended until the earlier of:
 - one year or
 - the end of the outbreak period.
- The extension begins on the date the clock for the particular deadline would have started running.
- In other words, the one-year extension is applied on a rolling basis to each individual deadline per incident and is not a static period that ends on February 28, 2021 (one year from March 1, 2020).

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **What about an example?**

- If a qualified beneficiary, for example, would have been required to make a COBRA election by March 1, 2020, the prior notice delays that requirement until February 28, 2021, which is the earlier of 1 year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing).
- Similarly, if a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, the prior notice delays that election requirement until the earlier of 1 year from that date (i.e., March 1, 2022) or the end of the Outbreak Period.
- Likewise, if a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief under the Notices would end with respect to that notice or disclosure on February 28, 2021.
- The responsible plan fiduciary would be required to ensure that the notice or disclosure was furnished on or before March 1, 2021.

EXTENSIONS OF THE DEADLINES UNDER THE NATIONAL EMERGENCY

- **What should Plan administrators be doing?**
 - Plan administrators should consider affirmatively sending a notice regarding the end of the relief period” to those who the plan administrators know or should know will be affected by the ending of the extensions.
 - The DOL stated that prior disclosures, such as COBRA election notices and claims procedure notices, may need to be reissued or amended if they failed to provide accurate information regarding the deadlines to take action.
 - Recognizing that the guidance may be difficult to administer, the DOL also notes that its approach to enforcement with regard to the extensions “will be marked by an emphasis on compliance assistance and includes grace periods and other relief.”

TAKE WAYS AND CONCLUSIONS

TAKE WAYS

- **Premium Assistance:**
 - Not all COBRA participants are eligible.
 - Only those who are involuntarily terminated or have a reduction of hours.
 - In addition, those who were offered other coverage may elect COBRA but will not be eligible for assistance.
 - Those eligible must be given a special enrollment right.
 - Those eligible must be notified of that right.

TAKE WAYS

- **Extensions of the deadlines under the National Emergency:**
 - Two challenges: Notifying participants of the extensions and administering the extension.
 - Many COBRA participants may continue coverage without paying a premium.
 - All notices and disclosures have to be amended to add this delay.

CONCLUSIONS

- Employers and plan administrators need to work quickly.
- New notices must be created to explain these rights to affected individuals.
- On top of that, employers and administrators will need to try to locate individuals who were involuntarily terminated and lost coverage to advise them of their new COBRA rights, as such individuals may be eligible for subsidized COBRA for some period of time beginning April 1, 2021.
- Employers, plans, and insurers should be attentive to new developments as the government agencies should be issuing guidance in the weeks ahead which could significantly impact ARPA implementation and compliance.

CONCLUSIONS

- Employers have to be careful that employees and former employees not are denied their rights to benefits or amended notices.
- The next 12 months will be a challenging time for the administration of health and welfare plans.
- Governmental agencies will be lenient in policing these changes.
- Be ready to be challenged by plaintiff attorneys if mistakes are made.

COMMON QUESTIONS

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- **COBRA Premium Assistance:**
 - Is providing the COBRA Premium Mandatory?
 - Which employers are required to provide this?
 - Does it apply to those who lose coverage because of reaching age 26
 - Does it apply to HRAs or ICHRAs?
 - What coverages have to be offered?
 - What happens if coverages change?

COMMON QUESTIONS

- **COBRA Premium Assistance (continued):**
 - What happens if open enrollment happens in the middle of the premium assistance coverage period?
 - What is gross misconduct?
 - Can a former employee add dependents?
 - What if an employer cannot determine if an employee's termination is involuntary?
 - Can an employer force an eligible employee to pay back premiums as a condition to receive the COBRA premium assistance?

COMMON QUESTIONS

- **Extensions of the deadlines under the National Emergency:**
 - Are employers required to provide these extensions?
 - Which employers have to provide these extensions?
 - Which benefits does this apply to?
 - Do employers have to notify employees of these extensions?
 - What happens if an employer does not provide notice?
 - Does employees have to pay COBRA premiums to continue to receive COBRA coverage?

COMMON QUESTIONS

- **Extensions of the deadlines under the National Emergency:**
 - Could the one-year period apply separately to each incident?
 - If an employee wants to add a child and blows the 30-day period, does he or she have a year to add the child?
 - Could the employer require back premiums?
 - Does the employer have a year to provide notices and other disclosures?
 - Does this extension allow employees a year to enroll in the plan each year?

PARTICIPANT QUESTIONS???????

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