WINSTON & STRAWN LLP

BLOG

New Options for Affordable Health Coverage Under the American Rescue Plan Act

MARCH 12, 2021

The American Rescue Plan Act, signed into law on March 11, 2021 by President Biden (the Act), includes several provisions that will expand access to affordable health care during the ongoing COVID-19 pandemic. Although these provisions are quite generous to terminated workers and others receiving health coverage under COBRA or through an Affordable Care Act (ACA) exchange, they create some administrative challenges for insurers and employers, especially in light of recent agency guidance extending COBRA election and payment deadlines (see below). We anticipate additional guidance to clarify how employers and insurers are required to administer these enhanced subsidies and claim applicable tax credits.

Subsidies for COBRA Coverage

The Act includes a broad COBRA-subsidy provision applicable for the period between April 1, 2021, and September 30, 2021, to involuntarily terminated workers and those who lost coverage due to an involuntary reduction in working hours. In particular, the Act provides for *fully subsidized* health benefit coverage for such COBRA qualified beneficiaries electing coverage during this time frame. Under the Act, an ERISA health plan (including medical, dental, and vision) must fully cover the cost of COBRA premiums, but the employer will subsequently be reimbursed via a refundable tax credit. An employer can claim the credit by requesting an advance from the Internal Revenue Service, withholding Medicare taxes in anticipation of receiving the credit, or requesting a refund after the fact for any amounts paid in COBRA premiums exceeding Medicare tax liability.

Second, the Act gives employers discretion to allow eligible workers to elect COBRA for a different health plan from the one in which the employee and their dependents previously participated. However, the COBRA recipient must be eligible for the new plan, and the new plan's premium cannot exceed that of the former plan. A COBRA recipient also cannot transfer to a plan exempted from the ACA's group health plan requirements, a qualified small employer health reimbursement arrangement, or a flexible spending arrangement. This feature of the Act is optional, and due to its administrative complexity, we do not anticipate wide scale adoption.

Third, the Act extends the COBRA election period for a subset of eligible workers. Individuals who, prior to April 1, 2021, were involuntarily terminated or experienced a reduction in working hours but did not previously elect COBRA now have the opportunity to enroll in subsidized coverage. In addition, those who previously elected COBRA but

discontinued coverage before the Act's effective date can resume coverage to take advantage of the subsidy. Enrollment for these individuals begins April 1, 2021, and extends 60 days following the date of their employer's mandatory COBRA notice (described below). Essentially, this means affected individuals will be able to enroll in COBRA coverage during the subsidy period without electing COBRA retroactive to the date of the original qualifying event. Complicating matters, separately, the Department of Labor (DOL), in coordination with the Departments of the Treasury and Health and Human Services, issued EBSA Disaster Relief Notice 2021-01, suspending the COBRA election period until the end of the Outbreak Period, which is the earlier of the one year period following the qualified beneficiary's qualifying event, or 60 days following the end of the nationally declared public health emergency. (See our alert on the Outbreak Period extension, *Tri-Agencies Clarify Outbreak Period Relief Due to COVID-19*, for further information.) Additional guidance will be needed to clarify how these two rules work together. It is important to note, however, that the maximum COBRA duration is not extended by the Act. In other words, even for those affected individuals who elect COBRA coverage prospectively to take advantage of the subsidies, the duration of the COBRA coverage period is still measured from the date of the original qualifying event.

Note that the COBRA subsidy ends on the earlier of when a worker becomes eligible for coverage under another group health plan or Medicare, or the maximum period of continuation of coverage has been exhausted. Under the Act, workers are required to notify the plan sponsor when they qualify for coverage under another plan, or potentially face penalties for failure to do so.

Finally, the Act imposes on employers additional COBRA notice requirements. The employer must notify eligible workers of the availability of premium assistance and the option to enroll in different coverage (if the employer permits this benefit). Employers must also notify certain individuals who became eligible for COBRA prior to April 1, 2021, of the availability of the subsidy. In addition, the Act requires employers to notify COBRA beneficiaries in advance of the termination of the subsidy. The Act instructs the DOL to issue model notices addressing the subsidy to assist plan sponsors with compliance, which we expect in the near term.

Enhanced Affordable Care Act Premium Subsidies

The Act also temporarily amends the ACA's premium subsidy framework to make insurance purchased through a Marketplace Health Exchange more affordable. These changes follow President Biden's January 28, 2021 executive order reopening the ACA Exchange for enrollment between February 15 and May 15, 2021.

Specifically, the Act increases subsidies for individuals purchasing insurance coverage through a Marketplace Health Exchange for 2021 and 2022, with individuals having household incomes of up to 150% of the poverty line paying no health care premiums. Those with household incomes above 150% of the poverty line also enjoy an increased subsidy. In addition, individuals opting to receive advance payments of a refundable tax credit to reduce monthly premiums are not obligated to repay this amount beginning in taxable year 2019. Finally, those receiving unemployment compensation are eligible for no-cost health insurance through a Marketplace Health Exchange during 2021.

Winston Takeaway: *The new health insurance subsidies provide a substantial benefit to workers who have been terminated or had their hours reduced due to the economic impacts of the COVID-19 pandemic. However, changes to the COBRA subsidy provisions impose administrative burdens on employers who must now identify qualified beneficiaries who qualify for the COBRA subsidies, reopen COBRA election timeframes for certain affected individuals, arrange for subsidized health coverage for those affected individuals, understand a new and complex refundable tax credit, and ensure compliance with additional notice requirements.*

Additional guidance is anticipated to clarify implementation of these subsidy provisions and, in particular, their interaction with the DOL's recent Notice 2021-01 on COBRA election deadline extensions during the COVID-19 Outbreak Period. Plan sponsors should work with their administrators to implement and communicate these expanded notice requirements and new COBRA election rights.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney for further information.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

5 Min Read

Authors

Amy Gordon

Joanna Kerpen

Susan Nash

Jamie Weyeneth

Related Locations

Chicago | Washington, DC

Related Capabilities

Labor & Employment | Employee Benefits & Executive Compensation | Health Care

Related Professionals

Amy Gordon

Joanna Kerpen

Susan Nash

Jamie Weyeneth

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

© 2024 Winston & Strawn LLP.