

Stimulus Package Resurrects the COBRA Subsidy

During the Great Recession of 2008-09, the American Recovery and Reinvestment Act (ARRA) subsidized premium payments to most COBRA-eligible people who experienced a job loss. At the time, we predicted this subsidy would become permanent. We were wrong. The provision sunset after May 2010.

On March 11, 2021, President Biden signed the [American Rescue Plan Act of 2021](#) (“ARPA”) into law. Section 9501 of ARPA resurrected a 6-month subsidy period (April 1, 2021 to September 30, 2021, also known as the “Premium Assistance Period”) during which “assistance eligible individuals” (“AEI or workers”) may qualify for a 100% subsidy for COBRA coverage. During the Premium Assistance Period, qualifying workers are not required to pay monthly COBRA premiums for medical, dental, or vision coverage.

AEIs are COBRA qualified beneficiaries who were involuntary terminated or have suffered a reduction in hours and who are, or could have been, eligible for COBRA coverage during the Premium Assistance Period. ARPA does not extend the maximum COBRA coverage period (generally 18 months but may be as long as 29 or 36 months), it only suspends a worker’s obligation to make COBRA premium payments for up to 6 months.

ARPA also permits workers to retroactively elect COBRA benefits or start benefits as of April 1, 2021, even if they

initially chose COBRA then dropped the COBRA benefits or previously declined coverage. Employers must also refund any COBRA premiums paid by workers for any period of coverage for which they paid during the Premium Assistance Period within 60 days of the individual electing COBRA coverage.

Premium assistance for workers ends on the first day the individual is eligible for coverage under a different group health plan, the first day the individual is eligible for Medicare benefits, termination of the individual's maximum coverage period, or when the subsidy expires on September 30, 2021, whichever comes first. The Premium Assistance Period is not available to COBRA qualified beneficiaries who voluntarily left their jobs or who qualify for COBRA because of death, divorce, or loss of dependency status.

Employer Considerations

Under ARPA, employers must also provide employed and previously employed AEs with revised COBRA notices informing them of the availability of premium assistance and their rights. These revised notices should include information on the availability of the subsidy, a notice of the extended election period for COBRA coverage, and a notice of the expiration of the subsidy. All CCM employers should make sure that their COBRA notices are compliant.

Employers should send these revised notices to subject individuals within 60 days after April 1, 2021, or prior to May 31, 2021. Failure to provide AE's with revised COBRA notice may result in a penalty of 110% of the premium assistance

the individual receives as a federal tax penalty under section [6720C of the Internal Revenue Code](#) (the “Code”). The U.S. Department of Labor will be issuing model notices that plan administrators may use for guidance by Sunday, April 11, 2021.

Finally, under [Code section 6432](#), employers may recover the costs of premium assistance coverage from the federal government by claiming a credit against their quarterly Medicare payroll tax liability. The maximum credit per quarter is limited to the Medicare payroll taxes for each quarter and is essentially a dollar-for-dollar credit for the amount the employer would have otherwise been paid in COBRA premiums by AEIS during that quarter. Employers may not claim COBRA premium assistance tax credit on amounts paid for which they also are claiming tax credits as qualified wages under the paid sick leave credit (Internal Revenue Code Section 3131), the paid family leave credit (Internal Revenue Code Section 3132) or the employee retention credit (Internal Revenue Code Section 3134). If the employer’s credit exceeds the Medicare taxes owed, any excess will be refunded. Conversely, any overstatement of the credit will be treated as an underpayment of taxes.

Conclusion

We were wrong about the COBRA subsidy persisting after the Great Recession. It sunset. Although we rarely engage in prognostication, we think the new COBRA subsidy will become a permanent feature of America’s health care policy. The COVID pandemic changed everything.

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