North Risk Partners®

Health Care Reform Update

IMPORTANT NOTICE REGARDING HEALTHCARE REFORM

COVID Relief Bill Provides 100% COBRA Premium Subsidy and Enrollment Option for Involuntarily Terminated Employees

Congress has passed, and the President has signed, the American Rescue Plan Act of 2021 (ARPA), creating a 100% COBRA premium subsidy and additional COBRA enrollment rights for certain employees and their families who have lost group health plan coverage due to an involuntary termination of employment or reduction of hours. Here are highlights of the COBRA provisions:

Premium Subsidy

ARPA establishes a 100% COBRA premium subsidy for certain assistance eligible individuals (AEIs) during the period beginning on April 1, 2021 (the first day of the first month beginning after the bill was signed by the President) and ending on September 30, 2021. An AEI is a qualified beneficiary who is eligible for and elects COBRA for a period of coverage within the subsidy period due to a qualifying event of involuntary termination of employment or reduction of hours. The employer (or, in some cases, the plan or insurer) will pay 100% of an AEI's COBRA premium during that time period and will be reimbursed by the federal government through a credit against payroll taxes or, for credit amounts exceeding payroll taxes, as a refund of an overpayment. The subsidy period may be shortened for AEIs who reach the end of their COBRA maximum coverage period or who become eligible for coverage under Medicare or another group health plan (excluding coverage consisting of only excepted benefits, health FSAs, and qualified small employer HRAs (QSEHRAs)).

Extended Election Period

Individuals who do not have a COBRA election in effect on April 1, 2021, but who would be AEIs if they did, are eligible for the subsidy. In addition, individuals who elected but discontinued COBRA coverage before April 1, 2021, are eligible if they would otherwise be AEIs and are still within their COBRA maximum coverage period. These individuals may elect COBRA during the period beginning on April 1, 2021 and ending 60 days after they are provided required notification of the extended election period. COBRA coverage elected during the extended election period will begin with the first monthly (or shorter) period of coverage beginning on or after April 1, 2021 and may not extend beyond the AEI's original maximum coverage period.

Plan Enrollment Option

The Act also creates a "plan enrollment option," under which a plan may (but is not required to) permit AEIs to elect a different coverage option. An AEI would have 90 days after notice of the enrollment option is provided to make the election. The different coverage cannot have a premium that exceeds the premium for the individual's existing coverage and must also be offered to active employees. Different coverage that offers only excepted benefits is excluded, as are QSEHRAs and health FSAs.

COVID Relief Bill Provides 100% COBRA Premium Subsidy and Enrollment Option for Involuntarily Terminated Employees

Notices

Group health plans must timely notify AEIs who become entitled to elect COBRA during the subsidy period of the subsidy's availability and the option to enroll in different coverage (if permitted by the plan). This notice obligation can be met by amending existing notices or by providing the required notices in a separate document. Plan administrators must notify AEIs who are eligible for an extended election period by May 30, 2021. In addition, plans must notify AEIs of their subsidy's expiration between 45 and 15 days before the expiration date, unless the subsidy is expiring because the AEI has become eligible for coverage under another group health plan or Medicare. Specific notice content requirements apply, and the DOL is directed to issue model notices for initial subsidy notifications within 30 days of enactment and a model expiration notice within 45 days of enactment.

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 have lost their employer-sponsored health coverage. Effective for taxable years ending after the date of enactment, however, AEIs are not eligible for the HCTC for any period of coverage in which they receive a COBRA subsidy.

Employers, insurers, and administrators will need to implement the COBRA provisions in this legislation on very short notice, as subsidies are to be available beginning April 1, 2021. We look forward to the DOL's release of model notices and further guidance, particularly regarding how the subsidy interacts with the extension of COBRA deadlines due to the COVID-19 outbreak period. Nevertheless, preparations should begin now to address the challenges inherent in such a quick implementation.

COVID Relief Bill Temporarily Increases DCAP Maximum, Expands ACA Premium Tax Credit, and Extends Tax Credit for Paid Leave

Congress has passed, and the President has signed, the American Rescue Plan Act of 2021 (ARPA), providing sweeping COVID-19 relief that includes several benefits-related provisions. A 100% COBRA premium subsidy has drawn perhaps the most attention, but other items are also of interest to group health plan sponsors, administrators, and advisors.

Here are highlights:

DCAP Changes

The maximum amount of Dependent Care Assistance Plan (DCAP) benefits that can be excluded from income is temporarily increased from $5,000 to $10,500 (from $2,500 to $5,250 for taxpayers who are married filing separately) for taxable years beginning in 2021. Plans can be amended retroactively for the change so long as the amendment is adopted by the last day of the plan year in which the amendment is effective and the plan is operated in accordance with the amendment's terms beginning on its effective date. Temporary changes have also been made to the dependent care tax credit (DCTC) for 2021. Among other things, the DCTC is refundable and the dollar limit on expenses that can be taken into account is increased from $3,000 to $8,000 for taxpayers with one qualifying individual and from $6,000 to $16,000 for taxpayers with two or more qualifying individuals. Changes have also been made to the child tax credit and earned income tax credit; these credits may be relevant when determining the federal tax savings from participating in a DCAP vs. claiming the DCTC.

Enhanced Premium Tax Credit

The existing ACA premium tax credit is expanded for taxable years 2021 and 2022. (Under existing rules, the credit is limited to taxpayers with household income between 100% and 400% of the federal poverty line (FPL) who purchase insurance through an Exchange.) ARPA eliminates the upper income limit for eligibility and increases the amount of the premium tax credit by decreasing, in all income bands, the percentage of household income that individuals must contribute for Exchange coverage. The adjusted percentage ranges from zero to 8.5% (for 2020 it had been set at 2.06% to 9.78% and for 2021, 2.07% to 9.83%). Special enhancements to the credit are also included for individuals receiving unemployment compensation in 2021.

Credits for Paid Sick and Family Leave

ARPA extends the tax credits that originated in the Families First Coronavirus Response Act (FFCRA) as a way to reimburse small and midsize employers for making required payments for pandemic-related sick or family leave. The FFCRA requirement to provide paid leave expired on December 31, 2020, but for employers voluntarily continuing to provide it, the Consolidated Appropriations Act, 2021 extended the credit through March 31, 2021, and ARPA further extends the credit to leave provided through September 30, 2021. ARPA's extension applies the credit to Medicare taxes rather than Social Security; restarts the 10-day limit on the amount of qualified sick-leave wages taken into account with respect to any employee;

increases the aggregate maximum credit for qualified family leave wages to $12,000; and adds a nondiscrimination requirement. In addition to the existing credit for certain health plan expenses attributable to sick or family leave, ARPA adds credits for collectively bargained defined benefit pension and apprenticeship program contributions and FICA taxes (both Social Security and Medicare) to the extent those contributions and taxes are allocable to sick or family leave wages for which the credit is allowed.

Plan sponsors, advisors, and administrators should not lose sight of these “other” ARPA provisions amid the COBRA subsidy implementation challenges. Unlike many benefit plans limits and thresholds, the maximum DCAP exclusion amounts are not indexed for cost-of-living changes, leaving some DCAP sponsors and participants to wonder whether they would ever increase—and perhaps disappointed that this change is only temporary. Whether plan amendments are needed to adopt the change will depend on how the DCAP is drafted. The expanded premium tax credit will help individuals seeking health coverage through the Exchange. But because applicable large employers (ALEs) potentially face shared responsibility penalties if full-time employees receive premium tax credits, expanded eligibility for the credits could increase penalty exposure for ALEs that do not offer affordable, minimum-value coverage to all full-time employees.