

03-12-2021 V2

American Rescue Plan Act of 2021 (ARPA)
Subtitle F – Preserving Health Benefits for Workers

COBRA PREMIUM SUBSIDY & OTHER COBRA RIGHTS:

It is not for all but is for some. And compliance needs to be quick!

Employees and their families that have experienced a loss of coverage attributable to a reduction in hours or an involuntary termination of employment, may be eligible for paid COBRA coverage. As usual, the devil is in the details of who actually qualifies and the terms and conditions of the payments. In a nutshell --

Who Gets It? “Assistance eligible individuals” (AEIs).

An AEI is defined as a qualified beneficiary (for COBRA purposes) who is eligible for and elects COBRA due to a qualifying event (for purpose of COBRA) that is a reduction in hours (e.g., furloughed employees, reduced scheduled employees) or an **involuntary termination**.

Voluntary terminations (which presumably include retirements, reductions in force programs, severance package terminations, etc.) are not included.

This subsidy will be available for **Assistance Eligible Individuals (AEIs)**, as determined by the Act, from April 1, 2021 through September 30, 2021. COBRA participants must meet the below criteria in order to be an AEI and it must be determined that coverage was lost due to involuntary termination of employment or reduction in hours.

The Subsidy is available for:

- Qualified beneficiaries already on COBRA.
- Qualified beneficiaries within their COBRA election period who would be AEIs if they were covered under COBRA.
- Qualified Beneficiaries that were covered under COBRA, dropped COBRA, and are still within their COBRA maximum coverage period (e.g., 18, 29, 36 months).
- Eligible COBRA participants who do not have an election in place, will have the opportunity to make an election during an Extended Election Period and will be able to take advantage of the subsidy effective April 1, 2021. This will be referred to as the "lookback period" in determining member eligibility.
- Eligible COBRA participants who become eligible for COBRA continuation coverage on or after April 1, 2021 will be eligible for the subsidy while it is in effect.

NOTE: Keep in mind the suspended running of the time frames to elect COBRA coverage. These prior rules must be coordinated with these new requirements. The definition of AEI is far reaching.



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To help you and our employer clients determine if COBRA participants are eligible for the subsidy, MEDSURETY will provide a report for listing all participants in the lookback period, and a utility for performing a mass update of the subsidy eligibility per member.

What Do They Get? A subsidy of 100% of the cost of the COBRA coverage received during the six month period of time beginning April 1, 2021 and ending September 30, 2021 – the “window”.

“Group health plans subject to COBRA” really means group health plans subject to COBRA - not just major medical – with one exception. Health flexible spending arrangements offered through cafeteria plans **are not** subject to the ARPA special COBRA provisions. Other group health plans including dental coverage, vision coverage, most employee assistance programs, most on-site clinics and wellness programs, and HRAs **are subject** to the ARPA special COBRA provisions. The definition of group health plan is far reaching.

The subsidy is not included in the taxable income of the recipient.

The subsidy is only available if the qualified beneficiary is/becomes covered under COBRA and remains covered under COBRA. If COBRA ends during the six month window (e.g., becomes covered under another group health plan or Medicare, reaches the end of his/her COBRA maximum coverage period, etc.), the subsidy stops. ARPA includes a penalty provision with respect to subsidy recipients that do not timely notify the plan of information regarding other coverage. The penalty authorized under ARPA is the greater of \$250 or 110% of the subsidy to which the individual was not entitled. The penalty applies with respect to each failure.

Can an AEI Change Coverage? Maybe. An employer sponsoring the group health plan to which COBRA applies may permit AEIs to elect a different coverage option than the coverage option otherwise required under COBRA (i.e., the coverage option the person was enrolled in immediately prior to the qualifying event). The different coverage has to be a coverage option available to similarly situation active employees and cannot be excepted benefits, a health FSA, or a QSEHRA. For example, a qualified beneficiary covered under a major medical plan’s more expensive coverage option (e.g., low deductible) could change to a less expensive coverage option (e.g., higher deductible) under the major medical plan. This could help AEIs obtain coverage at a lower cost. NOTE: Whether this is permitted is a decision for the employer that sponsors the major medical plan. It is not required.



How Will AEIs Know About This? Group health plans subject to COBRA must notify AEIs about the subsidy (and the ability to change coverage, if available) by May 30, 2021. This notification can be through an amended COBRA notification that would otherwise be provided (e.g., normal election notice) or a separate “special” notice. ARPA includes a list of required elements. And, model notices are required to be available within thirty (30) days of enactment (March 11, 2021).

Comment: There is no requirement that a model notice be used, so notification can take place earlier. Because the model notice will not be available until after the window has begun (begins on April 1, 2021), consideration should be given to notifying as soon as possible.

Notification must also be made before the subsidy ends so the qualified beneficiaries know when their responsibility to pay the COBRA cost resumes/begins. Model notices for this purpose are required to be available within forty five (45) days of enactment (March 11, 2021).

Remember the far reaching definition of AEI described above? The notification responsibilities are also far reaching.

Who Pays the Subsidy? The employer, plan, or insurer pays the subsidy -- 100% of the AEI's COBRA premium for the COBRA during the “window”.

In general, for:

- A single employer group health plan that pays benefits on a self-insured basis, the employer is responsible for the subsidy.
- A single employer group health plan that pays benefits through the purchase of an insurance policy, the insurance carrier is responsible for the subsidy.

The payor will be reimbursed by the federal government through a credit on certain quarterly employment taxes. The financial impact could be far reaching, especially for smaller self-insured group health plans. ARPA does not appear to have any financial hardship provisions.

The ARPA special COBRA provisions clearly include non-federal governmental entities (e.g., states, cities, counties, school districts, watershed districts, etc.) and tribal entities in their governmental capacity. COBRA appears in ERISA, the Code, and the Public Health Services Act (PHSA). COBRA for non-federal governmental entities and tribal entities in their governmental capacity applies through the PHSA. ARPA definitions repeatedly describe COBRA as it appears in all three locations. In addition, the State is considered an employer that can offset subsidies paid by it from its quarterly employment taxes.



The ARPA special COBRA provisions also apply with respect to “a State program that provides comparable continuation coverage.” This appears to include state continuation requirements which may apply where COBRA does not apply (e.g., small employers not subject to COBRA) and where COBRA and state continuation requirements both apply. This will require careful tracking of both federal COBRA coverage and state continuation coverages.

Suggestions:

1. Identify group health plans subject to the ARPA special COBRA provisions.
2. Identify the means of providing the benefits – insured, self-insured – to then identify who is responsible for covering the COBRA premium.
3. Identify qualified beneficiaries (under each of the group health plans subject to the ARPA special COBRA provisions) during the last eighteen (18) months regardless of whether elected COBRA.
4. Within that group, identify the qualified beneficiaries whose COBRA qualifying event was a reduction in hours or an involuntary termination.
5. Notify this group of the subsidy availability and the ability to change coverage options, if available.
6. Going forward, for those that experience a COBRA qualifying event that is a reduction in hours or an involuntary termination, include in normal COBRA notifications (or provide in addition to the normal COBRA notifications) information regarding the subsidy and the ability to change coverage options, if available.
7. Prepare notification of the subsidy ending. Calendar when the notifications need to be sent.
8. Keep third parties servicing the group health plans up to date (e.g., consultant, broker, TPA, COBRA administrator, etc.).
9. Work with third parties servicing the group health plans to accomplish the above items.
10. Document processes.

How will Medsurety be handling the COBRA subsidy through the ARPA That was just signed?

- We are adding the required notifications to our software.
- ARPA requires the Department of Labor (DOL) to provide model notices within 30 days from the date of enactment - on or before April 10. MEDSURETY will review these model notices and incorporate the DOL's language into a set of MEDSURETY standard subsidy notices, referred to as AEI Notices. The Act requires that individuals in the lookback period, as well as those currently enrolled, receive a notification regarding the subsidy within 60 days of April 1, 2021; newly eligible COBRA participants should be notified within the current standard COBRA time frames.



As with any legislative or regulatory changes affecting COBRA participants, MEDSURETY will create and develop new functionality to assist in automating and simplifying administration for the employers you serve. MEDSURETY is actively working to determine additional requirements and functionality needed. We will communicate more details about the nature and timing of platform updates and associated processes next week.

Please contact us if we can assist.

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