

BRMS

Compliance Notice

As a result of recent federal regulatory guidance and legislation, there are significant changes impacting group health plans. These changes are the result of the COVID-19 National Emergency and as such are both urgent and temporary. As your third-party administrator, we want to inform you about these requirements for your plan and of our efforts to ensure your plan is compliant.

FEDERAL ARPA COBRA SUBSIDIES

Background

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) that subsidizes COBRA premiums by reimbursing plan sponsors for COBRA premiums. For employers that sponsor ERISA plans, the employer will take a credit on their quarterly Medicare taxes. For multiemployer plans, the entity to whom the credit is payable is the plan.

To the extent that the credit amount exceeds the employer's Medicare payroll tax, the excess amount may be claimed as a tax credit. ARPA also includes a provision indicating the credit may be advanced, pursuant to forms and instructions to be developed by the IRS. Other guidance will instruct non-ERISA plan sponsors, i.e. public entities, how to receive a refund for subsidized premiums.

Employers requesting the credit or refund may not "double-dip". An employer cannot claim reimbursement for the COBRA premium under ARPA in addition to the emergency paid sick leave/emergency family medical leave or the employee retention credit under the CARES Act or FFCRA.

Who Is Eligible For the Subsidy?

Only employees and their covered dependents* that lose coverage due to the employees' involuntary job loss or reduction in hours are eligible for the subsidy. *The employee's job loss or reduction in hours does not have to be related to COVID-19.*

These "assistance eligible individuals (AEIs)" must be eligible for COBRA for one or more months between April 1, 2021 and September 30, 2021. This means that AEIs with a qualifying event date on or after November 1, 2019 are eligible for one or more months of the subsidy.

AEIs are required to elect COBRA in order to receive the subsidy, *however, they are not required to have coverage prior to April 1, 2021.* The result is that there may be a gap in coverage for the AEI.

AEIs are not entitled to the subsidy if they are *eligible* for coverage under another group health plan or Medicare. AEIs who fail to report this information are subject to IRS penalties.

All AEIs are eligible to receive the subsidy, regardless of their income.

Employees are not eligible for the subsidy if they lose coverage due to voluntary termination. Similarly, dependents are not eligible for the subsidy if they lose coverage due to death of the employee, divorce, or are no longer due to age, i.e. children that reach age 26.

* The IRS is expected to issue guidance that will clarify whether domestic partners, or any dependents added after the qualifying event, are eligible for all or a portion of the subsidy. These dependents are referred to as "non-qualified beneficiaries" in the COBRA regulations. Because ARPA indicates that the subsidy is available for "qualified beneficiaries", any portion of the COBRA premium for a "non-qualified beneficiary" may not be eligible for the subsidy.

How Much of COBRA Premium Is Subsidized?

The subsidy is for the entire premium, including the 2% administration fee. The subsidy can be taken for medical, dental and/or vision coverage.

The *maximum* subsidy is the six (6) months of April through September 2021. Many AEIs will receive a subsidy for less than six months. For example, an AEI with a qualifying event date of November 1, 2019 is only eligible to receive a subsidy for April 2021 since that is their 18th month of COBRA eligibility.

Employers *may* allow AEIs to enroll in another plan offered by the employer, rather than the plan the AEI was enrolled in prior to the subsidy. This is only permitted if the other plan has a lower premium. Employers are *not required* to permit plan changes.

IF BRMS ADMINISTERS YOUR COBRA:

Actions by BRMS

BRMS will notify AEIs of the availability of the subsidy. For AEIs that did not previously enroll in COBRA, they will have an opportunity to enroll for the months they qualify for the subsidy. The content of the notification and election form will be based on a model notice that the DOL will issue later this month.

Each month between April and September, BRMS will provide employers with a report of AEIs that elected COBRA. Employers can use this report to take the credit offered by the federal government.

BRMS will issue refunds to any AEIs that remit premium for a subsidized month.

BRMS will notify AEIs in advance of the expiration of their subsidy. The content of the notification will be based on a model notice that the DOL will issue later this month.

Actions Needed by Employers

By April 19, if you wish to allow AEIs to transfer to a lower premium plan, notify BRMS at COBRA@brmsonline.com so that we can include this option in the notice sent to qualified beneficiaries.

By April 23, provide BRMS with a list of all employees that lost coverage due to involuntary termination on or after November 1, 2019. Going forward, this information will need to be reported monthly. Your list(s) should be submitted to COBRA@brmsonline.com

Because AEIs are not required to be enrolled in coverage prior to April 1, 2021, *if applicable, please reach out now to your stop-loss carrier and ask whether they require a plan amendment to permit a gap in coverage prior April 1, 2021.* Notify your BRMS Account Executive if an amendment is needed.