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LAW GROUP

# COBRA Subsidy and DCAP Changes Under American Recovery Plan Act

Presented by

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# Premium Assistance

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- ◆ Assistance Period
  - April 1, 2021-September 30, 2021
  - But not beyond expiration of COBRA period
    - Includes disability extension and second qualifying event
  - Terminates if individual becomes eligible for disqualifying other coverage
  - Plan must be subject to COBRA or state requirements
    - Voluntary continuation coverage not enough
- ◆ Assistance Percentage – 100%

# Assistance Eligible Individual

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- ◆ Eligible for COBRA based on:
  - Reduction in hours, even if voluntary
    - Includes leaves, strikes, etc., if regular coverage is lost
    - Does not include death of employee
  - Involuntary termination of employment
    - Not for termination for gross misconduct
    - Includes constructive termination, where employee leaves voluntarily in response to working condition changes, etc.
- ◆ Elects COBRA coverage
- ◆ Includes qualified beneficiary dependents of individual who was terminated or hours reduced

# Assistance Eligible Individual

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- ◆ Person can be AEI more than once
- ◆ Employer can rely on individuals' self-certification
  - But not if employer knows contrary facts
  - And presumably not where employer turns a blind eye to facts it should know, such as reason for termination

# Assistance Eligible Individuals

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- ◆ Penalty for failure to notify plan of eligibility for other coverage
  - \$250 for each failure
  - If intentional, the greater of \$250 or 110% of premium assistance improperly provided
- ◆ Coordination with Health Care Tax Credit
  - Individual cannot have both subsidy and HCTC

# Disqualifying Other Coverage

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- ◆ Assistance-eligible individual must notify plan if individual becomes eligible for disqualifying other coverage
- ◆ Other coverage includes:
  - Any other group health plan coverage other than coverage consisting of only
    - excepted benefits or flexible spending account
    - qualified small employer health reimbursement arrangement
    - Other COBRA coverage
  - Medicare

# Disqualifying Other Coverage

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- ◆ Only disqualifying if individual eligible to enroll
  - Not eligible during waiting period or if open enrollment period closed
    - But COVID extension may have kept open enrollment period open if based on special enrollment period
  - Not disqualifying unless available to individual on or after April 1, 2021, so prior coverage not a problem
- ◆ Unanswered questions for dental/vision plans
  - Other dental/vision coverage may not be disqualifying
  - Other major medical coverage may be disqualifying

# Disqualifying Other Coverage

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- ◆ Coverage through an Exchange is not disqualifying
  - But individual cannot receive COBRA Subsidy and Health Care Tax Credit for same period
- ◆ Retiree coverage
  - Not disqualifying if under same plan as COBRA plan
  - Disqualifying if under a different plan



# Alternate Coverage Option

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- ◆ Election Period
  - Within 90 days after notice of such option
- ◆ Restrictions
  - Cannot increase COBRA premium (unless individual's prior coverage option no longer offered)
  - Only allowed if employer permits alternate option
  - Must be offered to similarly situated actives
  - Cannot be solely excepted benefits, qualified small employer health reimbursement arrangement, or flexible spending account

# Extension of Election Period

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- ◆ The following will have an extended election period (not applicable to state mini-COBRA):
  - An individual who would be an assistance-eligible individual on or after April 1, 2021 but for not having elected COBRA
  - An individual who elected COBRA but discontinued such coverage before April 1, 2021
- ◆ Extended period
  - From April 1, 2021 through 60 days following receipt of notice of extended election rights

# Coordination with COVID Extensions

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- ◆ Individual electing Subsidy may choose to have COBRA start April 1, 2021 or be retroactive to qualifying event
  - If individual chooses Subsidy without choosing retroactive COBRA, the right to choose retroactive COBRA is lost forever
  - But if retroactive COBRA is chosen, the premium for retroactive COBRA is not due until end of COVID extensions

# Notice Requirements to Individuals

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- ◆ COBRA notice must contain:
  - Availability of premium assistance
  - Option to enroll in alternative coverage if available
- ◆ Must be in clear and understandable language
- ◆ May be included in existing notice or a supplement may be provided
- ◆ Additional notice must contain:
  - Forms necessary for establishing eligibility for premium assistance

# Notice Requirements to Individuals

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- ◆ Additional notice must contain, cont.:
  - Name, address, and telephone number necessary to contact plan administrator or any other person maintaining relevant information for assistance
  - Description of extended election period
  - Description of other coverage notification obligation
  - Description, displayed in prominent manner, of right to subsidy and any conditions on entitlement to it
  - Description of alternative coverage option, if any

# Notice Requirements to Individuals

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- ◆ Notice of expiration of assistance period
  - Must contain notice that:
    - The individual's premium assistance period will expire soon
    - Such individual may be eligible for coverage, without premium assistance, through COBRA or coverage under a group health plan
  - Not required if regular COBRA period ends during or at end of subsidy period
  - Must be given at least 15 days before end of subsidy
    - And no more than 45 days before end of subsidy period

# Plans Eligible for Premium Assistance

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- ◆ Medical Plans
- ◆ Stand alone dental and vision plans
- ◆ HRAs
- ◆ Retiree health if offered under same plan as active coverage

Not Eligible for Premium Assistance – health FSAs or QSEHRAs

# Premium Assistance Credit

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- ◆ Available to:
  - Insurer if non-Federal COBRA plan is fully insured
  - Employer sponsor if Federal COBRA plan or single employer plan is fully or partially self-funded
  - The plan if a multi-employer plan
- ◆ Reimbursement through certain payroll taxes
  - Refundable if payments insufficient
  - May be advanced in anticipation of credit
- ◆ Employer with FFCRA credit cannot duplicate



# Premium Assistance Credit

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- ◆ If employer is entitled to claim credit, employer must pay premium to insurer
- ◆ Amount of credit includes full 102% COBRA premium
- ◆ No credit available for amount that employer would have subsidized
  - Employer may amend plan to increase required COBRA premium so long as it follows normal rules under § 54.4980B-8, Q&A-2(b)(1) and notice requirements for doing so

# Premium Assistance Credit

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- ◆ Only available for portion of premium attributable to qualified beneficiaries
  - Not available for other family members, such as domestic partners who do not meet dependent test

# Claiming the Premium Assistance Credit

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- ◆ Report the credit and number of AEIs on Form 941, Employer's Quarterly Federal Tax Return
  - Filed at the end of each quarter
- ◆ Can reduce deposit of Federal employment taxes in anticipation of the credit.
- ◆ File Form 7200, Advance Payment of Employer Credits Due to COVID-19, if employer wants to request an advance of an anticipated credit
  - File in advance, but only if a period of coverage has begun
- ◆ Can still claim credit even if an AEI fails to provide notice no longer eligible due to other coverage unless the employer has actual knowledge of the disqualifying coverage.

# Dependent Care Assistance

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- ◆ Solely for 2021, the annual limits on tax free childcare have increased
  - \$5,000 limit increased to \$10,500
  - \$2,500 limit for married filing separately increased to \$5,250
- ◆ This can be utilized for a plan year beginning in 2021 for Section 125 Cafeteria Plans with dependent care flexible spending accounts
- ◆ Amendments would need to be signed no later than the last day of the 2021 plan year

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# QUESTIONS?

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