DESCRIPTION OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CONTINUATION OF JOB-BASED COVERAGE

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 10, 2021

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

February 8, 2021
JCX-2-21

CONTENTS

Page

INTRODUCTION 1

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CONTINUATION OF JOB-BASED COVERAGE.. 2

SUBTITLE F—PRESERVING HEALTH BENEFITS FOR WORKERS.. 2

A. Preserving Health Benefits for Workers.. 2

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of the Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage on February 10, 2021. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Budget Reconciliation Legislative Recommendations Relating to Continuation of Job-Based Coverage* (JCX-2-21), February 8, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO CONTINUATION OF JOB-BASED COVERAGE

SUBTITLE F—PRESERVING HEALTH BENEFITS FOR WORKERS

A. Preserving Health Benefits for Workers

Present Law

In general

Employer-sponsored health plans (referred to as "group health plans")[2] generally are required to offer an employee, spouse, or dependent child covered by the plan the opportunity to continue coverage under the plan for a specified period of time after the occurrence of certain events that otherwise would have terminated the coverage ("qualifying events").[3] These continuation of coverage requirements are often referred to as "COBRA continuation coverage" or "COBRA" requirements.[4]

The Code imposes an excise tax on the failure of a group health plan to comply with the COBRA continuation coverage rules with respect to a qualified beneficiary (as defined below). The excise tax with respect to a qualified beneficiary generally is equal to $100 for each day in the noncompliance period with respect to the failure. A plan's noncompliance period generally begins on the date the failure first occurs and ends when the failure is corrected. Special rules limit the amount of the excise tax if the failure would not have been discovered despite the exercise of reasonable diligence or if the failure is due to reasonable cause and not willful neglect.

In the case of a multiemployer plan, the excise tax generally is imposed on the group health plan. A multiemployer plan is a plan to which more than one employer is required to contribute that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. In the case of a plan other than a multiemployer plan (a "single employer plan"), the excise tax generally is imposed on the employer.

[2] A group health plan may include a health flexible spending arrangement, under which medical care expenses of an employee (and family members, if applicable) that are not covered by insurance may be paid or reimbursed.

[3] Sec. 4980B. Section 4980B(d) provides exceptions for plans maintained by employers with fewer than 20 employees, plans of governmental employers, and church plans.

[4] The COBRA requirements were originally enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272.

Plans subject to COBRA

A group health plan is defined as a plan of, or contributed to by, an employer (including a self-employed person) or an employee organization to provide health care (directly or otherwise) to its employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. A group health plan includes a self-insured plan. The term "group health plan" does not, however, include a plan under which substantially all of the coverage is for qualified long-term care services.

The following types of group health plans are not subject to the Code's COBRA rules: (1) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 (a "church plan"); (2) a plan established and maintained for its employees by the Federal government, by the government of any State or political subdivision thereof, or by any instrumentality of the foregoing (a "governmental plan");[5] and (3) a plan maintained by an employer that normally employed fewer than 20 employees on a typical business day during the preceding calendar year[6] (a "small employer plan").

Qualifying events and qualified beneficiaries

A "qualifying event" that gives rise to COBRA continuation coverage is, with respect to any covered employee, any of the following events which would result in a loss of coverage of a qualified beneficiary under a group health plan (but for COBRA continuation coverage): (1) death of the covered employee; (2) the termination (other than by reason of such employee's gross misconduct), or a reduction in hours, of the covered employee's employment; (3) divorce or legal separation of the covered employee; (4) the covered employee's becoming entitled to Medicare benefits under title XVIII of the Social Security Act; (5) a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan; and (6) a proceeding in a case under the U.S. Bankruptcy Code commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

A "covered employee" is an individual who is (or was) provided coverage under the group health plan on account of the performance of services by the individual for one or more persons maintaining the plan. A covered employee includes a self-employed individual. A "qualified beneficiary" means, with respect to a covered employee, any individual who on the day before the employee's qualifying event is a beneficiary under the group health plan as the spouse or dependent child of the employee. A qualified beneficiary also includes the covered employee in the case of a qualifying event that is a termination of employment or reduction in hours.

---

[5] A governmental plan also includes certain plans established by an Indian tribal government.

[6] If the plan is a multiemployer plan, then each of the employers contributing to the plan for a calendar year must normally employ fewer than 20 employees during the preceding calendar year.

Continuation coverage requirements

Continuation coverage that must be offered to qualified beneficiaries pursuant to COBRA must consist of coverage which, as of the time coverage is provided, is identical to the coverage provided under the plan to similarly situated non-COBRA beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under a plan is modified for any group of similarly situated non-COBRA beneficiaries, the coverage must also be modified in the same manner for qualified beneficiaries. Similarly situated non-COBRA beneficiaries are covered employees, spouses of covered employees, or dependent children of covered employees who (i) are receiving coverage under the group health plan for a reason other than pursuant to COBRA, and (ii) are the most similarly situated to the qualified beneficiary immediately before the qualifying event, based on all of the facts and circumstances.

The minimum required period of continuation coverage for a qualified beneficiary (*i.e.*, the minimum period for which continuation coverage must be offered) depends upon a number of factors, including the specific qualifying event that gives rise to a qualified beneficiary's right to elect continuation coverage. In the case of a qualifying event that is the termination or reduction of hours of a covered employee's employment, the minimum period of coverage that must be offered to the qualified beneficiary is coverage for the period beginning with the loss of coverage on account of the qualifying event and ending on the date that is 18 months[7] after the date of the qualifying event. If coverage under a plan is lost on account of a qualifying event but the loss of coverage occurs on a date after the qualifying event, the minimum coverage period may be extended by the plan so that it is measured from the date when coverage is lost.

The minimum coverage period for a qualified beneficiary generally ends upon the earliest to occur of the following events: (1) the date on which the employer ceases to provide any group health plan to any employee, (2) the date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required with respect to the qualified beneficiary, and (3) the date on which the qualified beneficiary first becomes (after the date of election of continuation coverage) either (i) covered under any other group health plan (as an employee or otherwise) which does not include any exclusion or limitation with respect to any preexisting condition of such beneficiary or (ii) entitled to Medicare benefits under title XVIII of the Social Security Act. Mere eligibility for another group health plan or Medicare benefits is not sufficient to terminate the minimum coverage period. Instead, the qualified beneficiary must be actually covered by the other group health plan or must be enrolled in Medicare. Coverage under another group health plan or enrollment in Medicare does not terminate the minimum coverage period if such other coverage or Medicare enrollment begins on or before the date on which continuation coverage is elected.

[7] In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled during the first 60 days of continuation coverage, the 18 month minimum coverage period is extended to 29 months with respect to all qualified beneficiaries if notice is given before the end of the initial 18 month continuation coverage period.

Election of continuation coverage

The COBRA rules specify a minimum election period under which a qualified beneficiary is entitled to elect continuation coverage. The election period begins no later than the date on which coverage under the plan terminates on account of the qualifying event, and ends no earlier than the later of 60 days or 60 days after notice is given to the qualified beneficiary of the qualifying event and the beneficiary's election rights.

Notice requirements

A group health plan is required to give notice of COBRA continuation coverage rights to employees and their spouses at the time of enrollment in the group health plan.

An employer is required to give notice to the plan administrator of certain qualifying events (including a loss of coverage on account of a termination of employment or reduction in hours) generally within 30 days of the qualifying event. A covered employee or qualified beneficiary is required to give notice to the plan administrator of certain qualifying events within 60 days after the event. The qualifying events giving rise to an employee or beneficiary notification requirement are the divorce or legal separation of the covered employee or a dependent child ceasing to be a dependent child under the terms of the plan. Upon receiving notice of a qualifying event from the employer, covered employee, or qualified beneficiary, the plan administrator is required to give notice of COBRA continuation coverage rights within 14 days to all qualified beneficiaries with respect to the event.

Premiums

A plan may require payment of a premium for any period of continuation coverage. The amount of such premium generally may not exceed 102 percent[8] of the "applicable premium" for such period, and the premium must be payable, at the election of the payor, in monthly installments.

The applicable premium for any period of continuation coverage means the cost to the plan for such period of coverage for similarly situated non-COBRA beneficiaries with respect to whom a qualifying event has not occurred, and it is determined without regard to whether the cost is paid by the employer or employee. The determination of any applicable premium is made for a period of 12 months (the "determination period") and is required to be made before the beginning of such 12-month period.

In the case of a self-insured plan, the applicable premium for any period of continuation coverage of qualified beneficiaries is equal to a reasonable estimate of the cost of providing coverage during such period for similarly situated non-COBRA beneficiaries, determined on an actuarial basis, and takes into account such factors as the Secretary of the Treasury ("Secretary") prescribes in regulations. A self-insured plan may elect to determine the applicable premium on

[8] In the case of a qualified beneficiary whose minimum coverage period is extended to 29 months on account of a disability determination, the premium for the period of the disability extension may not exceed 150 percent of the applicable premium for the period.

the basis of an adjusted cost to the plan for similarly situated non-COBRA beneficiaries during the preceding determination period.

A plan may not require payment of any premium before the day which is 45 days after the date on which the qualified beneficiary made the initial election for continuation coverage. A plan is required to treat any required premium payment as timely if it is made within 30 days after the date the premium is due or within such longer period as applies to, or under, the plan.

Other continuation coverage rules

Continuation coverage rules that are parallel to the Code's continuation coverage rules apply to group health plans under the Employee Retirement Income Security Act of 1974 ("ERISA").[9] ERISA generally permits the Secretary of Labor and group health plan participants to bring a civil action to obtain appropriate equitable relief to enforce the continuation coverage rules. In the case of a plan administrator who fails to give timely notice to a participant or beneficiary with respect to COBRA continuation coverage, a court may hold the plan administrator liable to the participant or beneficiary in the amount of up to $110 a day from the date of such failure.

Although the Federal government and State and local governments are not subject to the Code and ERISA's continuation coverage rules, other laws impose similar continuation coverage requirements with respect to plans maintained by such governmental employers.[10] In addition, many States have enacted laws or promulgated regulations that provide continuation coverage rights that are similar to COBRA continuation coverage rights in the case of a loss of group health coverage. Such State laws, for example, may apply in the case of a loss of coverage under a group health plan maintained by a small employer.

Federal employment taxes

Federal employment taxes are imposed on wages paid to employees with respect to employment and include taxes levied under the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and Federal income tax.[11] In addition, tier 1 of the Railroad Retirement Tax Act ("RRTA") imposes a tax on compensation paid to railroad employees and representatives.[12]

---

[9] Pub. L. No. 93-406, secs. 601 to 608.

[10] Continuation coverage rights similar to COBRA continuation coverage rights are provided to individuals covered by health plans maintained by the Federal government. 5 U.S.C. sec. 8905a. Group health plans maintained by a State that receives funds under Chapter 6A of Title 42 of the United States Code (the Public Health Service Act) are required to provide continuation coverage rights similar to COBRA continuation coverage rights for individuals covered by plans maintained by such State (and plans maintained by political subdivisions of such State and agencies and instrumentalities of such State or political subdivision of such State). 42 U.S.C. sec. 300bb-1.

[11] Secs. 3101, 3111, 3301, and 3401.

[12] Sec. 3221.

FICA taxes are comprised of two components: Old-Age, Survivors, and Disability Insurance ("OASDI") taxes and Hospital Insurance ("HI") taxes. With respect to OASDI taxes, the applicable rate is 12.4 percent with half of such rate (6.2 percent) imposed on the employee and the remainder (6.2 percent) imposed on the employer.[13] The tax is assessed on covered wages up to the OASDI wage base ($137,700 in 2020).[14] The Hospital Insurance ("HI") tax has two components: Medicare tax and Additional Medicare tax. Medicare tax is imposed on wages, as defined in section 3121(a), with respect to employment, as defined in section 3121(b), at a rate of 1.45 percent for the employer.[15] An equivalent 1.45 percent is withheld from employee wages.[16] Additional Medicare taxes are withheld from employee wages in excess of $200,000 at a rate of 0.9 percent.[17] There is no equivalent employer's share of Additional Medicare taxes. For purposes of this description, HI tax does not include Additional Medicare tax.

The employee portion of OASDI taxes must be withheld and remitted to the Federal government by the employer during the calendar quarter, as required by the applicable deposit rules.[18] The employer is liable for the employee portion of OASDI taxes, in addition to its own share, whether or not the employer withholds the amount from the employee's wages.[19] OASDI and HI taxes are generally allocated by statute among separate trust funds: the OASDI Trust Funds, Medicare's Hospital Insurance Trust Fund, and Supplementary Medical Insurance Trust Fund.[20]

Premium assistance for COBRA benefits

As part of the American Recovery and Reinvestment Act of 2009,[21] Congress provided temporary premium assistance for COBRA benefits to eligible individuals who had been terminated from employment. The premium assistance under this Act applied to 65 percent of a terminated employee's COBRA premium and was available for individuals who were eligible for COBRA between September 1, 2008 and December 31, 2009. Eligible individuals were treated as paying 100 percent of the premium required for COBRA continuation coverage if the individual paid 35 percent of the premium. Employers, plan administrators, or insurance

---

[13] Sec. 3101.

[14] Generally, the OASDI wage base rises based on increases in the national average wage index. Sec. 230 of the Social Security Act (42 U.S.C. sec. 430).

[15] Sec. 3111(b)(1).

[16] Sec. 3101(b)(1).

[17] Sec. 3101(b)(2).

[18] Sec. 3102(a) and Treas. Reg. sec. 31.3121(a)-2. See also sec. 6302.

[19] Sec. 3102(b).

[20] Secs. 201 and 1817 of the Social Security Act, Pub. L. No. 74-271 as amended (42 U.S.C. secs. 401 and 1395i).

[21] Pub. L. No. 111-5.

companies to whom the premiums were payable were allowed a refundable credit against payroll tax liability for the portion of premiums not paid by individuals eligible for premium assistance.

Description of Proposal

Reduced COBRA premium

The proposal provides that for a period of coverage during the period beginning on the first day of the first month beginning after the date of enactment and ending on September 30, 2021, an assistance eligible individual is treated as having paid any premium required for COBRA continuation coverage under a group health plan if the individual pays 15 percent of the premium. This reduction in the individual's premium is referred to as premium assistance. An assistance eligible individual is any qualified beneficiary who, with respect to a period of coverage during the period beginning on the first day of the first month beginning after the date of enactment of this proposal and ending on September 30, 2021 (1) is eligible for COBRA continuation coverage by reason of the termination of the covered employee's employment (except for a voluntary termination) or reduction of the covered employee's hours,[22] and (2) elects such coverage.

Under the proposal, any premium assistance provided is excludible from the gross income of the assistance eligible individual.[23] In addition, if an assistance eligible individual pays the amount of a premium eligible for premium assistance that the individual would have been required to pay but for the assistance provided under the proposal, the person to whom such payment is made must reimburse the individual for the amount paid in excess of the amount required to be paid.[24] Such reimbursement must occur no later than 60 days after the date that the individual elects the continuation coverage that is eligible for premium assistance.

The continuation coverage that qualifies for premium assistance also includes continuation coverage offered by a State[25] program that provides comparable continuation coverage. It does not include coverage under a health flexible spending arrangement offered under a cafeteria plan.[26]

[22] The qualified beneficiary must be eligible by reason of a qualifying event specified in section 4980B(f)(3)(B), section 603(2) of ERISA, or section 2203(2) of the Public Health Service Act, Pub. L. No. 78-410, except for a voluntary termination. Terminations due to the employee's gross misconduct do not qualify the beneficiary for COBRA continuation coverage.

[23] The proposal creates a new section 139I to provide the income exclusion.

[24] The person reimbursing the individual is eligible for a payroll credit (against the HI tax under section 3111(b)) for the amount of the reimbursement. See description of payroll tax credit below.

[25] For this purpose, "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[26] Sec. 125.

Plan enrollment option

A group health plan is permitted to provide a special plan enrollment option to assistance eligible individuals to allow them to change coverage options under the plan in conjunction with electing COBRA continuation coverage. Under this plan enrollment option, the assistance eligible individual may elect to enroll in different coverage within 90 days of the date of notice of the enrollment option. The individual must only be offered the option to change to a coverage option offered to similarly-situated active employees, and the premium for such option must not exceed the premium for the individual's group health plan coverage as of the date of the qualifying event. If the individual elects a different coverage option under this plan enrollment right in conjunction with electing COBRA continuation coverage, that coverage must be provided for purposes of satisfying the COBRA continuation coverage requirement. The different coverage offered may not include: a coverage option that provides only excepted benefits;[27] a qualified small employer health reimbursement arrangement;[28] or a flexible spending arrangement.[29]

This plan enrollment option only allows a group health plan to offer additional coverage options to assistance eligible individuals and does not change the basic requirement that a group health plan must allow an individual to continue enrollment with the coverage in which the individual is enrolled as of the qualifying event. If different coverage is elected, under the COBRA rules it must generally be permitted to be continued for the applicable required period (generally 18 months or 36 months, absent an event that permits coverage to be terminated) even though the premium assistance may only apply for nine months (or less).

Termination of eligibility for reduced premiums

The assistance eligible individual's eligibility for premium assistance generally terminates with the first month beginning on or after the earliest of (1) September 30, 2021, (2) the date following the expiration of the maximum required period of continuation coverage for the qualified beneficiary under the applicable COBRA continuation coverage provision, (3) the date following the expiration of the period of continuation coverage applicable under the special COBRA election opportunity described below, or (4) the first date that the assistance eligible individual becomes eligible for Medicare benefits under title XVIII of the Social Security Act or health coverage under another group health plan (including, for example, a group health plan maintained by the new employer of the individual or a plan maintained by the employer of the individual's spouse). However, eligibility for coverage under another group health plan does not terminate eligibility for premium assistance if the other group health plan coverage: consists only of excepted benefits; is a qualified small employer health reimbursement arrangement; or is a flexible spending arrangement.

---

[27] Excepted benefits include, for example, certain dental or vision benefits, long-term care, and coverage for on-site medical clinics. Sec. 9832(c); sec. 733(c) of ERISA; sec. 2791(c) of the PHSA.

[28] Sec. 9831(d)(2).

[29] Sec. 106(c)(2).

If an assistance eligible individual receiving premium assistance for COBRA continuation coverage under the proposal becomes eligible for coverage under another group health plan (except as described in the prior paragraph) or Medicare, the proposal requires the individual to notify the group health plan providing the COBRA continuation coverage of such eligibility. The notification must be provided in the time and manner specified by the Secretary of Labor. If an individual fails to provide this notification at the required time and in the required manner, a penalty of $250 is imposed unless it is shown that such failure is due to reasonable cause and not willful neglect.[30] In addition, if the failure is fraudulent, the individual must pay a penalty equal to the greater of $250 or 110 percent of the premium assistance provided after termination of eligibility.

Special COBRA election opportunity

The proposal provides a special election period for a qualified beneficiary who either (1) does not have an election of COBRA continuation coverage in effect on the first day of the first month beginning after the date of enactment of the proposal but who would be an assistance eligible individual were such an election in effect, or (2) elected COBRA continuation coverage and discontinued from such coverage before such first day of such first month. The special election period begins on the first day of the first month beginning after the date of the enactment of the proposal and ends 60 days after the date on which notice is provided to the individual regarding the availability of premium assistance (see notice requirements described below). COBRA continuation coverage elected during this special election period commences (including for purposes of premium assistance and any cost-sharing requirements for items and services under a group health plan) with the first period of coverage beginning on or after the first day of the first month beginning after the date of enactment of this proposal, and must not extend beyond the end of the period of COBRA continuation coverage that would have applied had the individual elected coverage under the COBRA rules (and not discontinued such coverage).

Payroll credit provided to person paying premium

The proposal provides that the person[31] to whom continuation coverage premiums are payable is allowed a credit for each calendar quarter against HI tax[32] or the equivalent amount of RRTA tax[33] in an amount equal to the premiums not paid by assistance eligible individuals for continuation coverage by reason of the proposal with respect to such quarter.[34] The person to

[30] The proposal creates a new section 6720C with the penalty provision.

[31] For this purpose, "person" includes the government of any State or political subdivision thereof, any Indian tribal government (as defined in section 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in section 501(c)(1) and exempt from taxation under section 501(a).

[32] Sec. 3111(b).

[33] Sec. 3221(a).

[34] The proposal creates new section 6432 to provide for the credit. Also, the proposal does not include express language that "holds harmless" the Federal Hospital Insurance Trust Fund from any effects of the proposal.

whom the premiums are payable is treated as being (1) the multiemployer group health plan; (2) in the case of a group health plan not described in (1) that is subject to COBRA continuation coverage requirements and under which some or all of the coverage is not provided by insurance, the employer maintaining the plan; or (3) in the case of a group health plan not described in (1) or (2), the insurer providing coverage under an insured plan.

The credit allowed may not exceed the HI tax or the equivalent amount of RRTA tax imposed on the employer, reduced by any credits allowed against such taxes under the Families First Coronavirus Response Act[35] or for purposes of the employee retention credit[36] on the wages paid with respect to the employment of all employees of the employer. However, if for any calendar quarter the amount of the credit exceeds the HI tax or RRTA tax imposed on the employer, reduced as described in the prior sentence, such excess is treated as a refundable overpayment.[37]

Under the proposal, the gross income of the person receiving the HI credit is increased by the amount of such credit for the taxable year that includes the last day of any calendar quarter with respect to which such credit is allowed. No amount for which a credit is allowed under the proposal may be taken into account as qualified wages for purposes of the employee retention credit or as qualified health plan expenses for purposes of the credits against HI tax and RRTA tax in the Families First Coronavirus Response Act.[38]

The proposal provides an appropriation of $10,000,000 to the Secretary of Labor (in addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated) for fiscal year 2021, to remain available until expended, for the Employee Benefits Security Administration to carry out the proposal.

Notice requirements

Under the proposal, the notice of COBRA continuation coverage that a plan administrator is required to provide under present law to qualified beneficiaries with respect to a qualifying event must contain certain additional information if the notice is provided to an individual who becomes entitled to elect COBRA continuation coverage during the period beginning on the first day of the first month beginning after the date of enactment of the proposal and ending on

---

Under present law, amounts appropriated and transferred to the trust fund include amounts equivalent to 100 percent of the taxes imposed by section 3111(b) with respect to applicable wages reported by the Secretary, determined by applying the rate to the reported wages. Sec. 1807 of the Social Security act, 42 U.S.C. sec. 1395i. Because the proposal does not affect either the rate under section 3111(b) or applicable wages, but only provides a credit against the amount of tax, the proposal does not affect the trust fund, and no hold harmless language is needed.

[35] Pub. L. No. 116-127, secs. 7001 and 7003.

[36] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, sec. 2301.

[37] The excess is treated as an overpayment and refunded under sections 6402(a) and 6413(b). In addition, any amount that is due to an employer is treated in the same manner as a refund due from a credit provision. 31 U.S.C. 1324. Thus, amounts are appropriated to the Secretary of Treasury for refunding such excess amounts.

[38] Pub. L. No. 116-127, secs. 7001 and 7003.

September 30, 2021. (Thus, this requirement applies generally to individuals who become entitled to elect COBRA continuation coverage during this time period, and not only those who were involuntarily terminated or had hours reduced.) The additional information that must be provided includes (1) information about the qualified beneficiary's right to premium assistance and any conditions on entitlement to that assistance; (2) a description of the option to enroll in different coverage if permitted; and (3) a description of the obligation of the qualified beneficiary to notify the group health plan of eligibility under another group health plan or eligibility for Medicare, and the penalty for failure to provide this notification.

The proposal provides that notice must also be furnished to an assistance eligible individual or to an individual eligible for the special COBRA election opportunity described above if such individual became entitled to elect COBRA continuation coverage before the first day of the first month beginning after the date of enactment of the proposal. In such case, the notice must provide the additional information that is required to be added to the notice described above, and must be provided within 60 days of such first day of such first month. Failure to provide such a notice is treated as a failure to satisfy the notice rules under the COBRA continuation coverage requirements.

In the case of group health plans that are not subject to the notice provisions of the COBRA continuation coverage requirements of the Code, ERISA, or the Public Health Service Act,[39] the proposal requires that notice be given to the relevant employees and beneficiaries as well, as specified by the Secretary of Labor (in consultation with the Secretary and the Secretary of Health and Human Services). Within 30 days after enactment, the Secretary of Labor is generally directed to provide model language for the additional notification required under the proposal.

The proposal also requires employers to provide assistance eligible individuals a written notice regarding the expiration of the period of premium assistance. Such notice must be provided no earlier than 45 days before the date of such expiration and no later than 15 days before such date. The notice must identify the date that the premium assistance will expire and explain that the individual may be eligible for COBRA continuation coverage without premium assistance or for coverage under a group health plan. Such notice is not required to be provided to an individual who is no longer eligible to receive premium assistance due to eligibility under a group health plan. The Secretary of Labor must prescribe model language for such notice within 45 days of the date of enactment.

Expedited review

The proposal also provides an expedited 15-day review process by the Secretary of Labor or the Secretary of Health and Human Services (both in consultation with the Secretary), under which an individual may request review of a denial of treatment as an assistance eligible individual by a group health plan. Either Secretary's determination upon review is de novo and is the final determination of such Secretary.

[39] Pub. L. No. 78-410.

Coordination with the HCTC

Under the proposal, any assistance eligible individual who receives premium assistance under the proposal for any month is not eligible with respect to such month for the health coverage tax credit (HCTC).[40]

Regulatory authority

The proposal provides authority to the Secretary and the Secretary of Labor to jointly prescribe such regulations or other guidance as may be necessary and appropriate to carry out the proposal as it relates to the premium assistance, including the prevention of fraud and abuse.[41] In addition, the proposal provides authority to the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out the rules relating to the HI credit for persons to whom the COBRA continuation coverage premium is payable, including (1) any reporting requirements or the establishment of other methods for verifying the correct amounts of reimbursements; (2) the application of the proposal to a multiemployer group health plan; (3) to allow the advance payment of the HI credit; (4) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the tax return for the applicable quarter or taxable year; and (5) to allow the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents[42]).

Effective Date

The proposal is generally effective on date of enactment.[43]

---

[40] Sec. 35. In addition, such individual is not treated as a qualifying family member or certified individual for purposes of section 35 or section 7527 (providing for the advance payment of the HCTC).

[41] The proposal grants the Secretary of Labor and the Secretary of Health and Human Services the authority to prescribe regulations or other guidance relating to the notices under the proposal, in addition to the rules relating to expedited review and outreach.

[42] As described in section 3504.

[43] The rules relating to the HI credit for persons to whom COBRA continuation coverage premiums are payable apply to premiums to which premium assistance applies under the proposal and to wages paid on or after April 1, 2021. The exclusion from gross income of premium assistance for assistance eligible individuals, as well as a coordination rule with the HCTC, are effective for taxable years ending after the date of enactment of the proposal.