

COVID-19: The American Rescue Plan Act of 2021 (ARPA) BENECON

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This webinar should <u>not</u> be construed as legal or tax advice. The current pandemic is unprecedented. The regulations are changing on an almost daily basis. This webinar is not intended to serve as a comprehensive guide to all aspects of this pandemic. Every situation is unique and will require special attention.

This is a <u>highly</u> complex and fast moving area and we <u>strongly</u> encourage groups to seek out the advice of their own accountants, legal counsel or other specialized professional to assist with compliance with all facets of this national emergency.



Agenda

- Overview of New Legislation
- ACA Expansion
- FFCRA
- Optional & Temporary DCAP Change
- Implementation Process for new DCAP Change
 - Benecon vs. Non-Benecon
 - Administration and Documentation Requirements
- Federal COBRA Subsidies
 - Overview
 - Benecon COBRA Administration





COVID-19: The American Rescue Plan Act of 2021 (ARPA)



a/k/a The Next COVID Stimulus Bill

- Signed into law by President Biden on March 11, 2021
 - Final version passed by House on March 10, 2021
 - Senate passed on March 6, 2021
- Emergency bill attempts to address ongoing economic challenges facing employers and employees as a result of ongoing COVID-19 pandemic.
- 628 page bill / \$1.9 Trillion
- Direct stimulus funds, increased unemployment benefits, food stamp increases, numerous tax provisions, small business relief, housing, education, vaccines / testing, transportation, cybersecurity, agriculture, etc.
- Only focusing on health benefits changes today



ACA Enhanced Premium Tax Credit



Temporary Expansion of ACA Premium Tax Credit

Existing Rule:

An ACA premium tax credit is available to taxpayers with household incomes between 100% and 400% of the Federal Poverty Line (FPL) who purchase insurance through a state or federal exchange / marketplace.

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 / Marketplace coverage.
- The adjusted percentage ranges from zero to 8.5%



Families First Coronavirus Relief Act (FFCRA)



FFCRA Update

Families First Coronavirus Relief Act (FFCRA)

Background FFCRA Training:

https://attendee.gotowebinar.com/recording/7344652318230100995

- Effective April 1, 2020 through December 31, 2020, FFCRA required certain employers to provide paid leave to workers who were unable to work or telework due to circumstances related to COVID-19.
 - In January 2021, The Consolidated Appropriations Act of 2021 extended the credit for employers to *voluntarily* provide with FFCRA leave through March 31, 2021 and receive tax credits
- ARPA further extends the employer tax credit for those employers that *voluntarily* provide the FFCRA leave through September 30, 2021.

Bottom Line: FFCRA Still Voluntary but tax credits extended

FFCRA (cont.)

- ARPA expands tax credit availability for paid sick leave and paid family leave provided for the <u>additional</u> following reasons:
 - Employee is obtaining COVID-19 vaccination;
 - Employee is recovering from any injury, disability, illness or condition related to such a vaccination;
 - The employee is seeking or awaiting results of a diagnostic test or medical diagnosis for COVID-19 (or their employer has requested such a test or diagnosis)
- ARPA adds non-discrimination rules to provide that no tax credit is available if the employer, in determining availability of the paid leave, discriminates in favor of:
 - Highly compensated employees;
 - Full-time employees; or
 - Employees on the basis of tenure with the employer.
- Resets the 10-day limit on the amount of qualified sick-leave wages taken under FFCRA beginning April 1, 2021.
 - As a result, an employer could *voluntarily* provide an additional 10 days of FFCRA paid sick leave beginning April 1, 2021, and would be eligible for a tax credit for doing so.
 - Employers are NOT required to do so.
- Increases the aggregate maximum credit for qualified family leave wages from \$10,000 to \$12,000



FFCRA - Future

- Even though ARPA doesn't make FFCRA mandatory, it does not mean that it couldn't become mandatory in the near future.
- There are indications that the Biden administration may attempt to resurrect pieces of the American Rescue Plan that did not make it into this bill into subsequent legislation in the very near future.
- There are also various pending proposals at the federal level to adopt a more comprehensive paid leave obligation for employers.
- It is still on the Biden administration's and many members of Congress's "to do" list.
- We could see new leave mandate proposals in the immediate future, so this will be one area to watch closely.



FFCRA - Action Items

- Consult with your legal counsel and/or accountants!
 - Benecon cannot counsel you on FFCRA leaves or on tax matters
- Update policies, if necessary
 - If you have a FFCRA leave policy that expired December 31, 2020, or will expire on March 31, 2021, you may need to update to September 30, 2021 if you extend.
- Educate yourself on state and local leave laws
 - See Action Item #1
 - Even if you choose not to extend FFCRA, you may be subject to state and local laws requiring COVID related paid leave.
 - Many laws went into effect 1/1/21
- Stay Tuned!
 - When FFCRA was first passed, the Department of Labor provided detailed Q&A guidance. There are still a lot of questions to be answered, and this is the best source for guidance.
 - https://www.dol.gov/agencies/whd/pandemic/ffcra-questions



Optional Temporary DCAP Change



Dependent Care Assistance Program (DCAP)

- A separate written plan of an employer for the use of employees to provide dependent care assistance to employees.
- Typically contained within your cafeteria plan documents (FSA)
- Allows employees to exclude certain amounts from gross income to help pay for dependent care programs with pretax dollars.
 - Accomplished through salary reduction through the cafeteria plan.
 - Only reimburses amounts employee has already contributed (different from a Health FSA, which requires full election amount up front).
- General rule allows up to \$5000 exclusion per year.
- ARPA allows for a **temporary** prospective increase **for 2021 only**:
 - \$10,500
 - \$5250 (if married, filing separately)



How to Implement the Optional Temporary DCAP Change if You Choose To Do So



Making the Change – Action Items / Concerns DCAP Administration

- 1. Identify your Administrator
- 2. Determine if change is allowed
- 3. Is your administrator automatically making change? / Can you opt out if choose to do so?
- 4. Costs associated with making any of the change / Costs for opting out
- 5. Will administrator make document changes
 - a. Cost?
 - b. Timing?
 - c. Notifications for employees?

Documents

- 1. Identify who maintains your DCAP Documents
- 2. Determine if change allowed / optional
- 3. Costs associated with making the changes
- 4. Actual document changes
 - a. Cost?
 - b. Timing?
 - c. Notifications for employees?
 - d. Process?

Internal Employer Processes

- 1. Employee notifications
- 2. Internal training of staff handling benefits / payroll deductions / self administration
- 3. Cost benefit analysis



DCAP Administration



If Benecon Administers Your DCAP:

- We will not make any change automatically
- You are permitted to make the change at no additional cost
- Our system is already updated and ready to implement the DCAP modification if you wish.
- You simply need to contact us once you have notified your employees of your intention to adopt the DCAP change.

CDHServices@Benecon.com



If Benecon does <u>not</u> administer your DCAP, then you must obtain consent from your DCAP administrator prior to implementing the DCAP change, revising your documents or notifying your employees.



DCAP Documents



If Benecon Maintains Your Documents:

- There is no need to contact us. We are going to be reaching out to you!
- You will be provided with an electronic form whereby you will choose whether you wish to institute the temporary DCAP change (the "Selection Form").
- Once you complete and return your Selection Form, Benecon will complete a restatement of all your necessary documents to encompass the change along with any other optional changes you may have made from the last batch of COVID relief.
 - Documents must be adopted by the last day of the plan year in which the amendment is effective; but
 - Employers must notify employees of benefits changes as soon as possible.



Employee Notifications - Deja Vu

- Along with the Selection Form, Benecon will also provide you with employee notices that you can utilize to inform your employees of the DCAP changes if intend to implement.
- If you choose to make the change, simply download the employee notice in the link provided on the Selection Form and deliver in any manner you wish!
 - With administrator approval, and employee notification, you can implement the changes immediately retroactive to January 1, 2021.
 - Payroll deductions are prospective.
 - No need to wait for the documents!



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Dependent Care Assistance Plans (DCAP) Change Form

Instructions

Choose YES or NO for the optional plan change below. If n/a, please choose NO.

If you choose YES, you will be given a link in this form to download an employee notice. Distribute the notice to your employees as soon as possible. There are not rules as to how this must be distributed (electronically, paper, mail, etc.). *Please download the notice before clicking submit.*

Once the form is submitted you will receive updated and restated documents incorporating any changes over the next several months. (Documents do not need to be updated until the end of 2021 so long as notice to employees is given as directed above.)

Group Name			

For Dependent Care Assistance Plans (DCAP) *

- YES. Permit participants to elect to withhold the temporary maximum amount of DCAP benefits
- that can be excluded from income. This amount is increased from \$5,000 to \$10,500 (from \$2,500 to \$5,250 for taxpayers who are married filing separately) for taxable year 2021.
- NO. Our group does not wish to temporarily increase the maximum amount of DCAP benefits for plan participants.

DCAP Amendment Notice

If you choose YES, distribute **DCAP Amendment Notice** to your employees as soon as possible in any format of your choosing (electronic or paper is acceptable). Click the link below to download the notice.

http://benecon.com/wp-content/uploads/2021/03/2021-DCAP-Amendment-Notice.docx

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Notice of Temporary Benefit Change Due to COVID-19

The Federal Government has released health plan guidance designed to assist employers and employees with the COVID-19 outbreak.

This notice applies to your Dependent Care Assistance Program (DCAP):

The maximum amount of DCAP benefits that can be excluded from income is <u>temporarily</u> increased from \$5,000 to \$10,500 (from \$2,500 to \$5,250 for taxpayers who are married filing separately) for taxable year 2021.

If you have any questions about the changes that have been made, please contact your employer.



DCAP Internal Processes for Employers



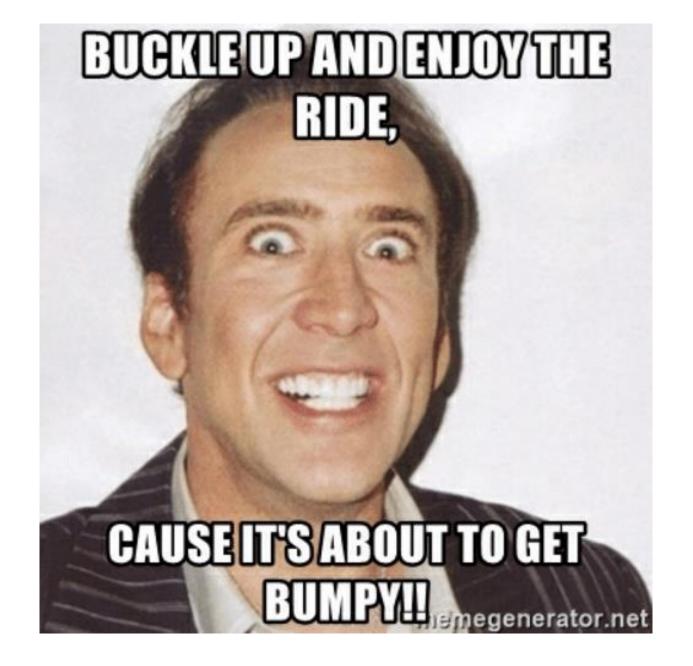
DCAP Action Steps for Employers

- No matter who drafts your documents, there will likely be a significant delay between implementation date and execution date. Therefore, the employer is responsible for creating and delivering notifications to employees of plan changes.
 - Ensure creation of employee notifications
 - Create process to deliver timely notifications to employees
- Make sure staff is trained to handle payroll deduction adjustments.



Federal COBRA Subsidies







Federal COBRA Subsidies - General Rules

- ARPA includes a temporary 100% COBRA subsidy for COBRA qualified beneficiaries where the qualifying event was an involuntary termination of employment or reduction in hours.
 - House originally passed 85% subsidy Senate increased to 100%
- "Assistance Eligible Individual" or "AEI"
 - Include employees and dependents who had elected or will elect COBRA
 - Qualifying event must be an involuntary termination of employment or reduction in hours
 - Not eligible for another group health plan or Medicare
 - Individuals who qualify for COBRA because of voluntary termination, retirement, or death would <u>not</u> be considered AEI
- Subsidy Amount
 - COBRA premium (including the 2% administration fee)
- Applies to all group health plans (fully insured and self funded) that are subject to COBRA under the Code, ERISA, or the PHSA
 - This means dental, vision, etc. are also included
 - Includes public sector / local government sponsored plans
 - Does <u>not</u> apply to church plans
 - Does apply to state / "mini" COBRA
 - Does <u>not</u> apply to Flexible Spending Arrangements (FSAs)



Federal COBRA Subsidies - General Rules (cont.)

- General Subsidy Coverage Period
 - April 1, 2021 through September 30, 2021
 - Coverage Period Can End Sooner If:
 - The individual's maximum COBRA coverage period ends; or
 - If the individual becomes eligible for other group health coverage or Medicare.
 - Individuals are required to notify their former employer if they become eligible for such coverage.
 - If they fail to do so, ARPA subjects the individual to a penalty of \$250.
 - If a failure to notify is deemed to be intentional, then the penalty is the greater of \$250 or 110% of the subsidy amount



Federal COBRA Subsidies - How They Work

- The Assistance Eligible Individual will <u>not</u> pay the COBRA premium
- The COBRA premium will be "advanced" by the employer, plan or insurer and then reimbursed by the government through a refundable tax credit (against Medicare hospital insurance {HI} taxes).
 - If the credit exceeds taxes payable, the excess is treated as a refundable overpayment.
 - Refunded quarterly can be advanced See your accountant!
- The employer applies for the tax credit for both self funded and fully insured coverage.
 - For a multiemployer plan, the plan applies for the tax credit.



Federal COBRA Subsidies – Additional Enrollment Options – a 2nd bite at the apple



- ARPA provides additional enrollment options for individuals who already had an involuntary termination of employment or reduction in hours within the last 18 months and did not timely elect COBRA or dropped COBRA.
- These individuals have a new 60-day election period following the date that they receive a new required COBRA notice.
- This special election opportunity allows these individuals to make a *prospective* COBRA election for the period beginning April 1, 2021, without requiring payment of premiums retroactive to the original loss of coverage (different from normal COBRA rules).
- Maximum COBRA period not changed still counted from date of original event.



Federal COBRA Subsidies – Additional Enrollment Options (cont.)

- Additionally, employers are permitted to allow Assistance Eligible Individuals change elections to other plan options that have the same or lower cost premiums.-OPTIONAL
 - Cannot be an option that provides only "excepted benefits" (dental, vision), a health FSA or an ICHRA
 - If allowed, employee would have 90 days from date of COBRA notice to make new election

Federal COBRA Subsidies - Notice Requirements

- ARPA requires employers to update COBRA notices sent to Assistance Eligible Individuals to describe the subsidy
 - Must be sent within 60 days of the date of applicability (April 1, 2021) = May 31, 2021
 - Failure to do so will be treated as a failure of the COBRA notice requirements
- Employers must also provide a notice of expiration before the premium subsidy expires.
 - Notice to enrolled former employees if their subsidy will expire prior to September 21, 2021.
 - Not required if coverage is ending because individual is eligible for other coverage.
- ARPA sets out content for the notices and directs the Secretary of Labor to publish new COBRA Model Notices.



Federal COBRA Subsidies - REVIEW

• General Subsidy Period

• April 1, 2021 - September 30, 2021



Subsidy Amount

- 100% COBRA Premium (including 2% admin.) for medical, dental and vision.
- Does not include Health FSA.
- Not taxable to Assistance Eligible Individual
- Paid by employer / plan sponsor who is reimbursed in the form of a credit / refundable overpayment against the Medicare component of Social Security taxes reimbursed quarterly can be advanced (talk to your accountant)

Assistance Eligible Individual ("AEI")

- Must be involuntary termination of employment or reduction of hours – also includes dependents
 - Does <u>not</u> have to be related to COVID
- Not available for those who quit, retire, death, etc.



Federal COBRA Subsidies - REVIEW (cont.)



Extended Election Period

- Any Assistance Eligible Individuals who first became COBRA eligible on or after November 1, 2019 (April 2021 would be the 18 month of coverage)
 - Subsidy applies to not only new Assistance Eligible Individuals, but also those who earlier declined COBRA or elected and let it lapse
 - Subsidy is only prospective for those not newly eligible
- Notice of extended election period must be provided, which triggers the 60-day period to elect and re-instate COBRA
 - DOL to produce a new model notice no later than April 10, 2021

Option to Change Coverage

• Employer MAY allow Assistance Eligible Individuals to change elections to a lower cost plan option.



Federal COBRA Subsidies - REVIEW (cont.)

Termination of Subsidy Period

- The earlier of:
 - September 30, 2021; or
 - The date when Assistance Eligible Individual's maximum COBRA period ends; or
 - Assistance Eligible Individual becomes eligible for other group health plan coverage or Medicare
 - Penalties if Assistance Eligible Individual fails to notify group about becoming eligible for other coverage or Medicare

Notification Duties

- Notices must be sent, within 60 days from April 1, 2021, to all Assistance Eligible Individuals (November 1, 2019 present) describing subsidies and extended election period.
- Subsidy information be included in all new qualifying event notices.
- · Advance notice of expiration of subsidy period is also required
 - DOL to provide new model notice no later than April 10, 2021





Example - Putting it all together:

- Meredith was involuntarily terminated from Seattle Grace Hospital on December 15, 2019, but did not elect COBRA.
- Meredith is as an Assistance Eligible Individual because she was involuntarily terminated and is not eligible for other group health coverage or Medicare.
- Seattle Grace's COBRA Administrator has sent Meredith a notice advising her of the availability of subsidies because she was still within her initial 18 month COBRA period, even though she never elected.
- Meredith now has an additional opportunity to elect within 60 days even though her initial election period expired on February 13, 2020.
 - Election period was not extended by Outbreak Periods because qualifying event happened prior to March 1, 2020.



Example – Putting it all together (cont.):

- Meredith is permitted to elect and enroll in COBRA as of April 1, 2021.
- Meredith's effective coverage date is April 1, 2021, and she does not owe any back premiums. (Prospective election)
- Seattle Grace will be charged Meredith's COBRA rate (plus 2% admin fee) beginning April 1, 2021.
- Seattle Grace's COBRA Administrator notifies Meredith that her subsidy is expiring June 15, 2021.
- Meredith's COBRA expires June 15, 2021.
 - The Qualifying Event date still applies
 - Meredith still only has 18 months of availability back from her Qualifying Event date of December 15, 2019.
- Meredith will never owe any COBRA premiums.
- Seattle Grace will recoup the money for Meredith's COBRA premiums by claiming a tax credit against their Medicare Hospital Insurance (HI) taxes.



Employer Action Steps - COBRA

- First and foremost, identify employees who were terminated involuntarily or involuntarily had their hours reduced from November 1, 2019 to present.
- Consider whether you will permit individuals to enroll in a different (lower cost) plan option than the one in which they enrolled when coverage was lost.
 - If permitted, this will need to be included in the notices.
- Make a plan to identify and document all future involuntary terminations / reduction of hours for tax credit.
- Check with your COBRA Administrator!!!

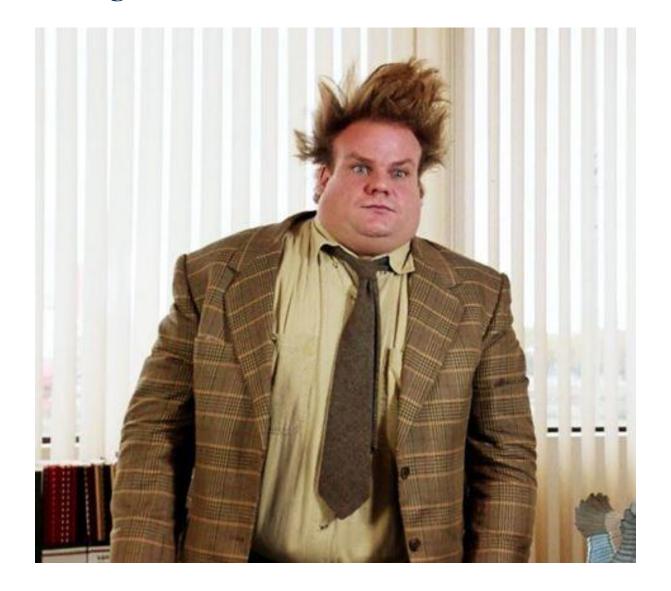


Check with your COBRA Administrator!

- Ask for their plan
 - How will payments work?
 - How will the 2% admin. be billed?
 - Will there be a system to identify who is an involuntary termination and will it be communicated to employer?
- Are they sending out a notifications?
 - What is the charge for this notices?
 - Are they combining or including notifications about Outbreak Period changes and Marketplace Notifications (EBSA Disaster Relief Notice 2021-01)?



Don't Forget – FAST TURNAROUND TIME!





Benecon COBRA Administration

(this section <u>ONLY</u> applies to those groups that use Benecon for COBRA Administration)



Benecon COBRA Admin. - Identifying Assistance Eligible Individuals

- Benecon will be sending correspondence to the group to assist in the identification of employees who were involuntarily terminated (including an involuntary reduction in hours).
 - Groups should begin preparing their own list <u>NOW</u> to compare.
 - If a group does not reply to the request for additional information, Benecon will assume the Qualified Beneficiary is an Assistance Eligible Individual and the employer will be charged the full COBRA premium (plus 2% admin fee) for that Qualified Beneficiary.

Benecon COBRA Admin. - Notifications

- Benecon will be revising all COBRA notifications and will send out to all Assistance Eligible Individuals with descriptions of the subsidy. No additional charge to employer.
- Benecon will revise all future COBRA election forms to include information about the subsidies, as well as a required attestation that an Assistance Eligible Individual is not eligible for other group coverage or Medicare. No additional charge to employer.
- Benecon will provide notices of potential subsidy expirations to qualified beneficiaries. No additional charge to employer.
- Benecon is already in the process of sending updated Outbreak Period Notices and Marketplace Notices to current Qualified Beneficiaries as they approach their extension expiration dates. This information will be now be combined with the new required notices. No additional charge to employer.



Benecon COBRA Admin. - Payments

- When an Assistance Eligible Individual elects COBRA, Benecon will apply a subsidy amount to the individual's account reflecting a paid through period of September 2021 (or the COBRA expiration date whichever comes first).
- The groups will not be sending any premium payments to Benecon.

• What about the 2% Admin. Fee?

- The employer group will still need to advance the 2% COBRA Admin. fee, which will also be part of the tax credit reimbursement.
- Benecon issues monthly disbursement reports reflecting monthly premium payments, which also include amounts due to Benecon. The 2% admin. fee due for each Assistance Eligible Individual will be reflected on this report.
- For any Qualified Beneficiaries, that are not Assistance Eligible Individuals, Benecon will continue to retain the 2% admin. fees from the disbursements, as has been our practice.



Final Group Checklist



- ✓ Decide on whether to keep offering FFCRA
 - ✓ If so, update policies accordingly
 - ✓ Consult with your legal counsel (local laws, policies, updates, etc.)
- ✓ If you offer a DCAP, decide if you are going to increase limit for 2021
 - ✓ Discuss with DCAP Administrator & Notify
 - ✓ Amend Docs / Notify Employees
 - ✓ Advise / Train staff about changes to prospective payroll deductions
- ✓ If you are subject to Federal COBRA, study the new rules
 - ✓ Identify which employees were involuntarily terminated / hours reduced since November 1, 2019
 - ✓ Work with your COBRA Administrator to learn their processes and charges for new notices
 - ✓ Determine whether you are going to allow individuals to make changes to lower cost plan
 - ✓ Work with accountant / legal counsel re: taxes and credits



Don't forget about EBSA 2021-01

- ✓ https://attendee.gotowebinar.com/recording/128361 0969558445327
- ✓ Employee Notices about changes to Outbreak Periods for Health Plans
- ✓ Notices to current COBRA and future COBRA beneficiaries about changes to Outbreak Periods / Expiration of Outbreak Periods
- ✓ Marketplace Notifications
- ✓ Consult with accountants, legal counsel and administrators



Be Patient!

- This is a major overhaul, and the law isn't even a week old.
 - There will be additional guidance that may require some future tweaking to the processes.
 - There may not be answers to some of your questions.
 - We're learning it right along with you.



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Thank you!

Why, When, and How to Address Health Benefit Continuation in Leave of Absence Policies

March 24, 2021 @ 10 am

