

May 14, 2020

Side-by-Side Comparison of Main Legislative Proposals on COBRA Premium Subsidies

| Provisions | HEROES Act Rep. Nita Lowey (D-NY) H.R. 6800 (Sec. 30312) | Worker Health Coverage Protection Act Rep. Bobby Scott (D-VA) H.R. 6514 | Health Care Protection Act Rep. Rodney Davis (R-IL) H.R. 6810 |
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| Subsidy Amount | Provides a 100% subsidy (i.e., requires the assistance eligible individual to pay 0% of the premium owed) | Provides a 100% subsidy (i.e., requires the assistance eligible individual to pay 0% of the premium owed) | Requires the assistance eligible individual to continue paying the amount the individual would have paid under their group health plan prior to their termination |
| Coverage Period | Provides 11 months of premium assistance (retroactive from March 1, 2020 through January 31, 2021) | Provides up to 15 months of premium assistance (retroactive from March 1, 2020 through 6 months after the public health emergency ends) | Provides at most 6 months of premium assistance (beginning from the date of enactment through January 1, 2021) |
| Limitations on the Availability of Subsidies | Provides that subsidies will be available to an assistance eligible individual until <u>the earlier of</u> an individual’s enrollment in another plan; eligibility for Medicare; or the end of the COBRA premium assistance | Provides that subsidies will be available to an assistance eligible individual until <u>the earlier of</u> an individual’s enrollment in another plan; eligibility for Medicare; the date 15 months from the first day of COBRA coverage; or the end of the COBRA premium assistance | Provides that subsidies will be available to an assistance eligible individual until <u>the earlier of</u> an individual’s enrollment in another plan; eligibility for Medicare; the end of the COBRA premium assistance; or July 1, 2021 (e.g., if an individual elects to receive the premium assistance in December 2020, it would be available until July 1, 2021, assuming no other circumstances render the assistance unavailable) |
| Assistance Eligible Individuals & Qualifying Events | Applies to individuals who are eligible for and elect COBRA coverage under certain statutory qualifying events (e.g., termination—other than by reason of such employee’s gross misconduct—or reduction of hours in employment) <u>and</u> individuals who are furloughed that remain eligible for coverage | Applies to individuals who are eligible for and elect COBRA coverage under certain statutory qualifying events (e.g., termination—other than by reason of such employee’s gross misconduct—or reduction of hours in employment) <u>and</u> individuals who are furloughed that remain eligible for coverage | Applies <u>only</u> to an individual who, between March 1, 2020 and December 31, 2020 is eligible for and elects COBRA coverage <u>and</u> is involuntarily terminated Does <u>not</u> apply to furloughed employees |
| Offer of Different Coverage | Permits assistance eligible individuals to switch to different coverage offered by the employer and treat that as their COBRA | <i>Incorporates Heroes Act language</i> with small technical changes | <i>Incorporates Heroes Act language</i> , though does <u>not</u> include the restriction that the “different coverage” cannot be a QSEHRA |

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| | continuation coverage, provided certain requirements are met (e.g., the premium for such coverage is not more expensive, the coverage is offered to active employees, the coverage does not only cover excepted benefits, the coverage is not—among other things—a qualified small employer health reimbursement arrangement (QSEHRA), etc.) | | |
| Retroactive Election of Coverage | <p>Ensures that (1) individuals who became eligible for COBRA prior to enactment <u>or</u> (2) individuals who elected COBRA after March 1, 2020 and discontinued it before the date of enactment have an extended election period during which they can elect COBRA coverage with the premium assistance</p> <p>Treats such individuals as if they had been covered and eligible for subsidies as of the date of the qualifying event, provided it occurred no earlier than March 1, 2020</p> | <i>Incorporates Heroes Act language</i> with small technical changes | <p><i>Incorporates Heroes Act language</i>, though does <u>not</u> apply to those who elected COBRA after March 1, 2020 and discontinued it before the date of enactment</p> <p>Provides that coverage will commence with the first period of coverage beginning on/after the date of enactment</p> |
| Income Level Restrictions | N/A | <p>Effectively eliminates the availability of COBRA premium assistance for high-income individuals with adjusted gross income above \$145,000 (or \$290,000 for a joint return) by increasing their federal taxes by any subsidy amount received (individuals making between \$125,000 and \$145,000 will have their subsidies partially canceled via increased taxes based on a phased-in percentage)</p> <p>Offers an option for high-income individuals to waive assistance and avoid this recapture</p> | <p>Effectively eliminates the availability of COBRA premium assistance for high-income individuals with adjusted gross income above \$145,000 (or \$290,000 for a joint return) by increasing their federal taxes by any subsidy amount received (individuals making between \$125,000 and \$145,000 will have their subsidies partially canceled via increased taxes based on a phased-in percentage)</p> <p>Offers an option for high-income individuals to waive assistance and avoid this recapture</p> |
| Reimbursement Mechanism | Reimburses employers, plans, and carriers via advanceable, refundable tax credits equal to the premiums not paid by assistance eligible individuals who receive | Reimburses employers, plans, and carriers for amounts not paid by eligible individuals as a result of these subsidies via reductions in or credit toward payroll taxes and wage | Reimburses employers, plans, and carriers for amounts not paid by eligible individuals as a result of these subsidies via reductions in or credit toward payroll taxes and wage |

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| | COBRA premium assistance, provided they comply with the necessary reporting requirements (i.e., requiring an attestation of involuntary termination/reduction of hours/furlough for each employee who is rendered eligible for reimbursement, a report of the amount of payroll taxes offset, etc.) | withholdings, provided they comply with the necessary reporting requirements (i.e., requiring an attestation of involuntary termination for each employee whose termination renders them eligible for reimbursement, a report of the amount of payroll taxes offset, etc.) | withholdings, provided they comply with the necessary reporting requirements (i.e., requiring an attestation of involuntary termination for each employee whose termination renders them eligible for reimbursement, a report of the amount of payroll taxes offset, etc.) |
| Special Enrollment Period | Treats expiration of COBRA premium assistance as a qualifying event for the purposes of rendering an individual eligible for a special enrollment period | Treats expiration of COBRA premium assistance as a qualifying event for the purposes of rendering an individual eligible for a special enrollment period | Establishes a special enrollment period during the 30 days following the bill's enactment during which eligible individuals may enroll in exchange plans |
| Notice Requirements | Requires additional written notices in "clear and understandable language" to inform assistance eligible individuals about their coverage options (following guidance by federal regulators regarding the content and form of such notices) Requires a specific notice upon the expiration of the period of COBRA premium assistance | <i>Incorporates Heroes Act language</i> with small technical changes | <i>Incorporates Heroes Act language</i> , though does <u>not</u> require the notices to be written in "clear and understandable" language and dictates fewer specific requirements for the content of the additional notices Does <u>not</u> require a specific notice upon the expiration of the period of COBRA premium assistance |
| Expedited Review of Denials | Provides a 15-day expedited review of denials of premium assistance by federal regulators, if an individual requests treatment as an "assistance eligible individual" and is denied such treatment by their group health plan | <i>Incorporates Heroes Act language</i> with small technical changes | <i>Incorporates Heroes Act language</i> with small technical changes |
| Outreach | Requires federal regulators to conduct an outreach campaign to educate group health plan administrators, states, insurers, and other interest groups regarding available enrollment and premium assistance Requires HHS to specifically conduct an educational outreach campaign to provide information regarding enrollment in Medicare | <i>Incorporates Heroes Act language</i> , does <u>not</u> require outreach on enrollment in Medicare | <i>Incorporates Heroes Act language</i> , does <u>not</u> require outreach on enrollment in Medicare |