

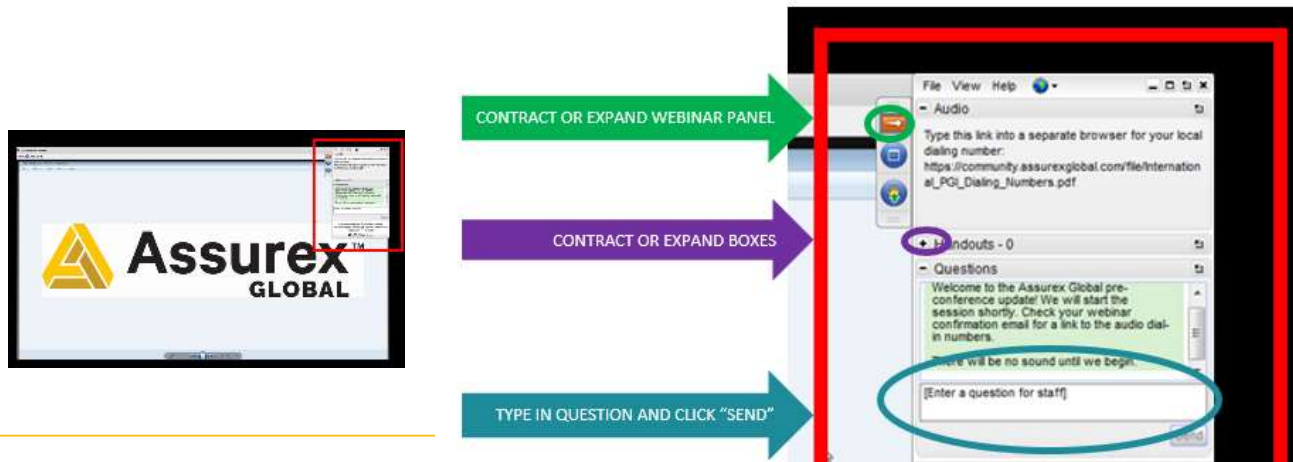
2021

# Regulatory Update

Presented by Benefit Comply

## Regulatory Update

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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### **Amanda Olimb, J.D., Senior Consultant**

Ms. Olimb is a benefits attorney who specializes in the area of health and welfare plan compliance. Her areas of expertise include ERISA, Section 125, Health Reform, HRS/HSA rules, and more. Prior to joining Benefit Comply, she was a compliance attorney for a national employee benefits consulting firm. Currently she is responsible for answering client compliance questions, providing compliance project consulting, writing compliance alerts, issue briefs and whitepapers, and delivering compliance related training. Ms. Olimb received her law degree from Mitchell Hamline College of Law where she graduated Magna Cum Laude and was chosen to participate in highly selective Mitchell Hamline Fellows Program.



### **Regan Debban J.D., Principal**

Ms. Debban has more than 10 years' experience in employee benefits as both an attorney and an advisor. She provides guidance related to regulatory compliance matters to employers and insurance industry professionals. Ms. Debban's work has included helping employers navigate and find practical solutions to complicated Affordable Care Act requirements and with other employee benefit compliance issues arising under ERISA, COBRA, Section 125, and HIPAA. Ms. Debban has been a featured speaker at events nationwide and has been a principal presenter in compliance webinars attended by thousands of employers and insurance professionals. She is also the author of a leading guide to ACA employer reporting requirements. Prior to joining Benefit Comply, Ms. Debban worked as in-house counsel assisting in HR, benefit, and data security compliance, including for a major Fortune 500 company. She also worked as a legal researcher and as an employee benefits consultant before entering law school. Ms. Debban received her law degree from William Mitchell College of Law and her MBA from The University of St. Thomas.

# Agenda

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- COBRA Subsidy – Notice Reminder & IRS Guidance
- DCAPs – Adjusted 2021 Limit
- PPE Reimbursement
- Outbreak Period
- Employer Mandate & Reporting
- Premium Tax Credits & Special Enrollments
- Mental Health Parity – Comparative Analysis
- COVID Vaccine Incentives
- PCORI Fee
- 2022 ACA OOP Maximum
- HSAs in 2022

# COBRA Subsidy – Notice Reminder

**COBRA subsidy available Apr. 1 – Sept. 30 2021**

- **New model Election Notice for qualified beneficiaries who experience a reduction in hours or involuntary termination of employment between now and Sept. 30, 2021**
- **DUE BY MAY 31, 2021: Model notice to inform existing qualified beneficiaries of their opportunity to continue COBRA at no cost or take advantage of a second chance to enroll effective Apr. – Sept. 2021**

# IRS Guidance for the COBRA Subsidy

IRS Notice 2021- 31 <https://www.irs.gov/pub/irs-drop/n-21-31.pdf>

# COBRA Subsidy – IRS Guidance Highlights

## Assistance Eligible Individuals

- Continuation coverage right triggered by an:
  - involuntary or voluntary reduction in hours; or
  - involuntary termination of employment (interpreted broadly)
- Eligibility for other group health plan coverage or Medicare, but not excepted benefits makes individuals ineligible
  - Inability to enroll (e.g., due to a waiting period, or outside open enrollment) is not eligibility, but consider extended HIPAA special enrollment rights
  - Eligibility that ended prior to April 2021 does not count as disqualifying
  - Retiree coverage is disqualifying if provided under a separate retiree plan



# COBRA Subsidy – IRS Guidance Highlights

## Coverage Requirements

- Subsidy is available for any group health plan coverage that was lost when the qualifying event occurred (but not health FSAs)
- If coverage that was lost is no longer available, employer should offer the coverage most similar to individual's previous coverage
  - The employer could offer cheaper options as alternatives as well
- Employer must offer the COBRA subsidy back to April 1, 2021, but individuals could choose to delay the effective date

# COBRA Subsidy – IRS Guidance Highlights

## 2<sup>nd</sup> Chance Election

- For plans subject to federal COBRA, individuals who triggered a continuation right prior to April 2021 and are still in their maximum coverage period, but who are not currently COBRA participants, must be given the opportunity to enroll effective April 1, 2021
  - For those not currently enrolled in COBRA, only required to look back 18 months
  - COBRA subsidy is available to those in an extended maximum coverage period (e.g., disability extension, 2<sup>nd</sup> qualifying event)
- Plans subject to state continuation are not required to offer the 2<sup>nd</sup> chance election
  - The COBRA subsidy must only be offered to current COBRA participants and those who experience a qualifying event between now and Sept. 30, 2021

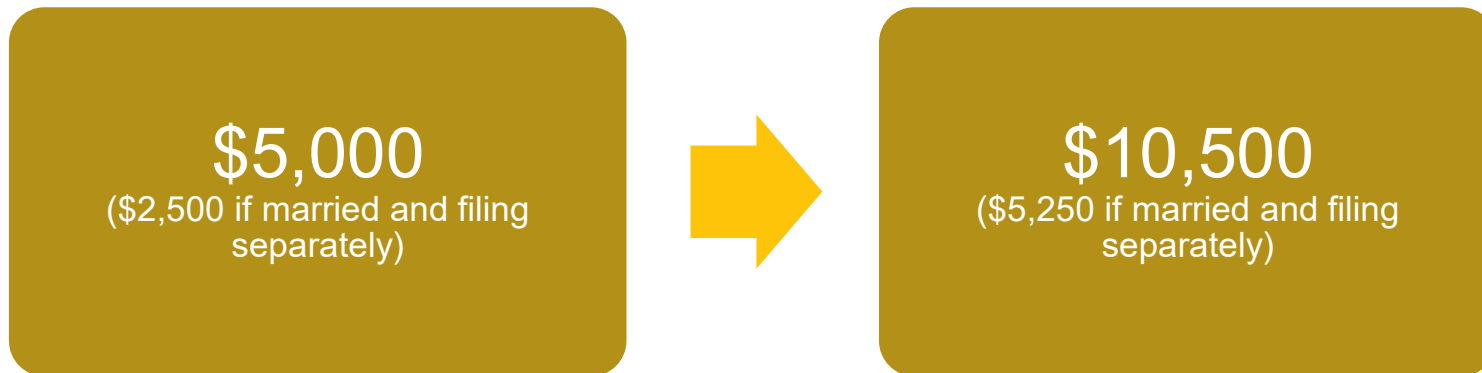
# COBRA Subsidy – IRS Guidance Highlights

## Payroll Tax Credit

- For plans subject to federal COBRA, the employer will be able to collect a payroll tax credit via Form 941
  - Entities that don't file a Form 941 normally can use it for this purpose
  - Employers who subsidize some or all of the COBRA premium (e.g., due to a severance agreement) can only claim a credit for the portion the COBRA participant would have been asked to pay
- For plans subject to state continuation, the carrier will be able to collect a payroll tax credit
- Additional guidance is available for employers who use third party payers

# DCAPs – Adjusted 2021 Limit

- Increase in DCAP Contribution Limit
  - Effective for 2021 calendar year only



- Recent guidance clarified amounts carried over or available via an expanded grace period are NOT included in this maximum amount
- Amendment must be made by the last day of the 2021 plan year

# PPE Reimbursement

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- IRS Announcement 2021-07
  - COVID-related PPE (e.g., masks, hand sanitizer, sanitizing wipes) reimbursable on a tax-favored basis without a prescription or need to treat for a specific condition



- Reimbursable by health FSAs, HRAs and HSAs retroactively to January 2020
- Health FSA and HRA amendments required only if:
  - Plan definition of eligible expenses specifically excluded such expenses; or
  - Employer would prefer not to provide reimbursement for such expenses

# Outbreak Period

## National Emergency

Declared by President Trump in March 2020

Remains in force until it is announced over

### Impact on Benefit Plans

- DOL and IRS Joint Rule requiring suspension of time frames under COBRA, HIPAA and ERISA until the end of the “Outbreak Period”

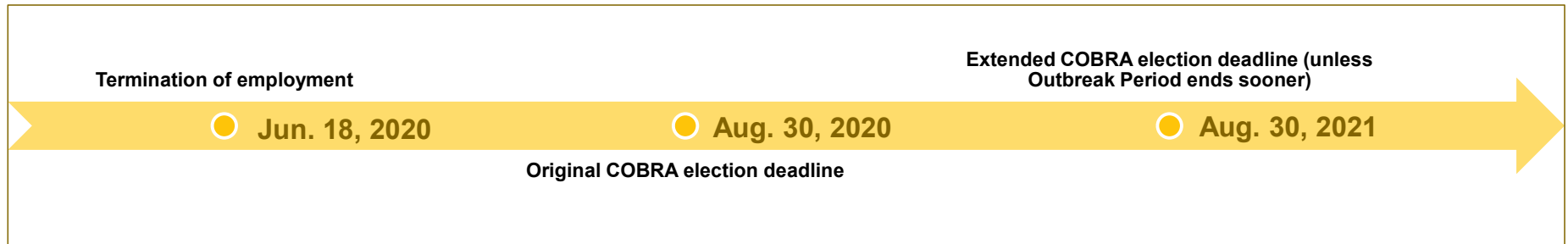
**Outbreak Period = National Emergency + 60 days**

## Disregarded Period

- Outbreak Period (National Emergency + 60 days) or 1 year from the individual’s triggering event, whichever expires first
- Applies to the following deadlines:
  - Notice for requesting HIPAA special enrollment rights
  - ERISA claims (including health FSA and HRA run-out periods)
  - COBRA elections and payments

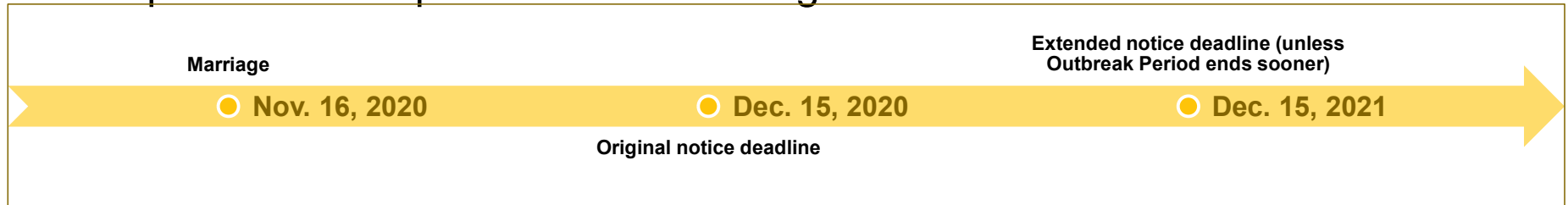
# Outbreak Period

- Example – COBRA Election



- Must pay COBRA premiums retroactively back to Jul. 1, 2020 to enroll

- Example – HIPAA Special Enrollment Right



- Effective date would be 1st of the month following notice

# Employer Mandate & Reporting

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## IRS Enforcement Efforts (now focused on 2018)

- Letter 226J (§4980H assessments for applicable large employers)
- Letter 5005-A (reporting penalties)
- Letter 5699 (failure to file)



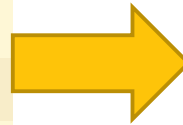
# Premium Tax Credit (PTC) Amount

## Original 2021 Percentages

Household income % of FPL	Initial %	Final %
<133%	2.07%	2.07%
133% to 150%	3.10%	4.14%
150% to 200%	4.14%	6.52%
200% to 250%	6.52%	8.33%
250% to 300%	8.33%	9.83%
300% to 400%	9.83%	9.83%

## Revised Percentages for 2021 and 2022

Household income % of FPL	Initial %	Final %
0% to 150%	0.00%	0.00%
150% to 200%	0.00%	2.00%
200% to 250%	2.00%	4.00%
250% to 300%	4.00%	6.00%
300% to 400%	6.00%	8.50%
400% and above	8.50%	8.50%



- PTC based on 2nd lowest cost silver Exchange plan

- Example:

Single individual makes \$31,900 (250% of FPL), 2<sup>nd</sup> lowest cost silver plan is \$500/month



Employee cannot be asked to pay more than \$106.33/month (4% x \$31,900 / 12)



PTC is \$393.67/month (\$500 - \$106.33)

# Exchange “Special Enrollment”

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- COVID-19 Special Enrollment Period
  - Most Exchanges offering special enrollment Feb. 15, 2021 – Aug. 15, 2021
- Special Enrollment After COBRA Subsidy Ends
  - End of employer or government subsidy toward COBRA coverage triggers a special enrollment period for individual health coverage
  - Expiration of the ARP COBRA subsidy triggers a special enrollment period

# Affordability

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- IRS Rev. Proc. 2021-23
  - Clarifies §4980H(b) affordability percentage for 2021 is still 9.83%

## Small Employers

<50 FTEs

- Is it better to offer “unaffordable” coverage and allow for PTC credit?
- What about for spouses and dependents?

## Applicable Large Employers

50 or more FTEs

- PTC might be better for employees, but employer faces potential penalties
- For employers choosing not to offer “affordable” coverage, risk of employees obtaining PTCs is greater (increased eligibility and enrollment opportunities)
- Penalty is approximately \$340/month in 2021 for employees who waive employer’s unaffordable coverage and qualify for a PTC

# Mental Health Parity – Comparative Analysis

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- New Parity Enforcement Efforts
  - Effective Feb. 10 – New “comparative analysis” must be made available upon request to federal or state agencies and plan participants
    - Focused on non-quantitative treatment limitations (NQTLS)
  - Agencies must perform at least 20 audits per year
  - Fully-insured, handled by carriers; self-funded, handled by employers
  - DOL’s Self-Compliance Tool (pp. 19 – 21), Steps 1 thru 4  
<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf>

# COVID Vaccine Incentives

- Do Wellness Rules Apply?

## HIPAA Wellness Rules

- Possibly a health-contingent program even if the incentive isn't tied to a group health plan because health status may prevent participation
- Recommendation:
  - Offer a reasonable alternative standard or waive the requirement for those who cannot participate because of a health reason
  - Limit incentive to  $\leq 30\%$  of cost of health coverage

## EEOC Wellness Rules

- Latest EEOC guidance indicates vaccines obtained from a third party unrelated to the employer may not be subject to EEOC rules
- Recommendation:
  - Offer reasonable accommodation for religious or disability-related objections
  - Don't be aggressive with incentives

# PCORI Fees

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- Plans Subject to PCORI Fee
  - Most group health plans, including HRAs, but not excepted benefits
    - Fully-insured plans handled by the carrier
    - Self-funded plans are the responsibility of the employer
- PCORI Fee Due Date
  - Jul. 31 in year following end of plan year via Form 720 (e.g., Jul. 31, 2021 for any plan years ending during 2020)
- Fee Per Covered Life
  - \$2.54/life for plan years ending Jan. – Sept. 2020
  - \$2.66/life for plan years ending Oct. – Dec. 2020

# 2022 OOP Maximums

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- ACA OOP Maximum
  - Plan participants cannot be asked to pay more than the maximum out-of-pocket (OOP) for in-network essential health benefits
  - Increasing in 2022 to \$8,700 for single / \$17,400 for family
    - Currently (for 2021) \$8,550 for single / \$17,100 for family

# HSAs in 2022

- Limits and Requirements for 2022

	HDHP Minimum Deductible	HDHP Maximum OOP	HSA Contribution Limit
<b>2021</b>	Single - \$1,400	Single - \$7,000	Single - \$3,600
	Family \$2,800	Family - \$14,000	Family - \$7,200
<b>2022</b>	Single - \$1,400	Single - \$7,050	Single - \$3,650
	Family - \$2,800	Family - \$14,100	Family - \$7,300



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