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MEMORANDUM

TO: Health Fund Clients

FROM: Slevin & Hart, P.C.

DATE: August 17, 2021

RE: Additional IRS Guidance Regarding COBRA Subsidy Under ARPA

In follow-up to our previous memoranda on the American Rescue Plan Act's ("ARPA") temporary 100% COBRA premium subsidy for eligible participants and dependents, this will describe additional clarifications relating to the COBRA subsidy that were issued by the IRS on July 26, 2021 in the form of FAQs ("Guidance").

1. <u>Eligibility for Subsidy During Periods of Extended COBRA Coverage</u>

As discussed in our June 9, 2021 memorandum, prior IRS guidance regarding the COBRA premium subsidy stated that the subsidy is available to an Assistance Eligible Individual ("AEI") who elected and remained on COBRA for an extended period due to a disability determination or second qualifying event, provided the additional period of coverage falls between April 1, 2021 and September 30, 2021 and the original qualifying event was a reduction in hours or an involuntary termination of employment. The new Guidance expands this eligibility to provide that the premium subsidy also is available to an AEI eligible for that extended period of coverage for disability even if the individual's original 18-month coverage period already expired and the individual has not yet elected the extended coverage for disability.

For example, assume that an individual is involuntarily terminated and elects COBRA coverage effective October 1, 2019. This individual's original 18-month coverage period is set to expire on March 31, 2021. On January 1, 2021, the individual receives a disability determination letter from the Social Security Administration ("SSA"). Generally, the individual would have 60 days from the issuance of the SSA's determination letter, until March 2, 2021, to notify the Plan of the disability in order to elect extended COBRA coverage. However, under the IRS and DOL's existing COVID-19 deadline extension, the individual's deadline to notify the Plan is tolled for one year. If the individual notifies the Plan of the disability determination on July 1, 2021 (within the one-year tolling period) and elects an extended period of COBRA coverage effective April 1, 2021, the individual would be eligible for the COBRA premium subsidy for periods of coverage between April 1, 2021 and September 30, 2021.

2. <u>End of Subsidy Period for Dental-Only or Vision-Only Coverage</u>

The Guidance also clarifies that, if an AEI previously elected COBRA coverage with the premium subsidy for dental-only and/or vision-only coverage, the AEI will no longer be eligible for the premium subsidy as of the date they become eligible to enroll in any other group health plan coverage or Medicare, <u>regardless of whether the other coverage provides dental and/or vision benefits</u>.

For example, assume that an AEI previously elected dental-only COBRA coverage effective April 1, 2021 and was receiving the premium subsidy for periods of coverage after April 1, 2021. If the AEI becomes eligible for group health plan coverage that provides only medical benefits and not dental benefits as of July 1, 2021, the individual will no longer be eligible for the COBRA premium subsidy for dental coverage as of July 1, 2021.

We will continue to monitor related guidance as it is issued and will notify you as additional information becomes available. In the meantime, please feel free to contact us with any questions.

cc: Co-Counsel (if any)

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