

COMPLIANCE ALERT

COVID-19-RELATED EXTENSION OF CERTAIN TIME FRAMES FOR EMPLOYEE BENEFIT PLANS

written by, Suzanne D'Amato, Esq

Recognizing the difficulties faced by plan sponsors, administrators, and participants during the COVID-19 emergency, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the IRS have issued a joint rule, formal notice, and FAQs, providing relief from certain established deadlines for group health plans. The guidance applies to all plans covered by ERISA or the Code, and HHS has announced it will extend similar relief to non-federal governmental plans. Here are the highlights affecting health and welfare plans.

The guidance broadly extends numerous plan deadlines applicable to participants and administrators, and the rule gives several examples. Specifically, the "outbreak period" beginning March 1, 2020, and ending 60 days after the announced end of the COVID-19 emergency is to be disregarded for the following purposes:

COBRA

Multiple COBRA deadlines have been extended until after the outbreak period ends, including:

- The 30- or 60-day deadline for employers or individuals to notify the plan of a qualifying event;
- The 60-day deadline for individuals to notify the plan of a determination of disability;
- The 14-day deadline for plan administrators to furnish COBRA election notices;
- The 60-day deadline for participants to elect COBRA; and
- The 45-day deadline in which to make a first premium payment and 30-day deadline for subsequent premium payments.

Example:

An employee's hours are reduced, causing the employee to lose active coverage under the health plan, which is a COBRA qualifying event. The employee receives the COBRA election notice on April 1, 2020.

Result:

The standard 60-day COBRA election period is extended by disregarding the outbreak period. If the national emergency were to end on April 30, 2020, the outbreak period would end on June 29, 2020. The employee would have until 60 days after the end of the outbreak period (until August 28, 2020) to elect COBRA.

Example:

A former employee was receiving ongoing COBRA continuation coverage under a group health plan that generally requires monthly premium payments be paid by the first of the month. The plan has a 30-day grace period for making premium payments. The individual made a timely February payment, but did not make the March payment or any subsequent payments during the outbreak period.

Result:

The outbreak period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. If the national emergency were to end on April 30, 2020, premium payments made by 30 days after June 29, 2020 (that is, by July 29, 2020) for March, April, May, and June 2020 are timely, and the individual is entitled to COBRA continuation coverage for those months. Here, payments for March, April, May and June are all deemed to be "timely" if they are made within 30 days after the end of the outbreak period.

HIPAA SPECIAL ENROLLMENT

The 30- and 60-day HIPAA special enrollment periods are extended. Thirty day special enrollment periods may be triggered when eligible employees or dependents lose eligibility for other health plan coverage in which they were previously enrolled, and when an eligible employee acquires a dependent through birth, marriage, adoption, or placement for adoption. Sixty-day special enrollment periods may be triggered by changes in eligibility for state premium assistance under the Children's Health Insurance Program.



Example:

An employee who had previously waived coverage under the plan gives birth on March 31, 2020 and would like to enroll herself and her newborn.

Result:

The standard 30-day special enrollment period is extended by disregarding the outbreak period. If the national emergency were to end on April 30, 2020, the outbreak period would end on June 29, 2020. The employee would have until 30 days after the end of the outbreak period (until July 29, 2020) to enroll herself and her child in the plan.

CLAIMS PROCEDURES

The deadlines are extended for individuals to file claims for benefits, for initial disposition of claims, and for providing claimants a reasonable opportunity to appeal adverse benefit determinations under ERISA plans and non-grandfathered group health plans. (Group health plans and disability plans generally must allow at least 180 days in which to appeal; other welfare benefit plans must allow 60 days.)

FURNISHING NOTICES

Plans will not be treated as having violated ERISA if they act in good faith and furnish any notices, disclosures, or documents that would otherwise have to be furnished during the outbreak period (including those requested in writing by a participant or beneficiary) “as soon as administratively practicable under the circumstances.”

FORM 5500

The notice confirms that Form 5500 filing relief is provided in accordance with IRS guidance, which provides that filings otherwise due on or after April 1 and before July 15, 2020, are now due July 15, 2020.

Plan administrators and participants alike will welcome this relief as businesses and plan administration have been disrupted by the COVID-19 emergency. The guidance acknowledges the uncertain duration of the pandemic and notes that additional guidance will be provided for specific parts of the country if necessary. We’ll continue to provide updates as developments warrant.

As always, please contact your Benefits Advisor with any questions.