



COVID-19 ALERT

GOVERNMENT EXTENDS MORE DEADLINES FOR PLANS AND EMPLOYEES

On Wednesday, April 29, 2020, the federal government [announced](#) Disaster Relief Notice [2020-01](#) and a [final rule](#) granting deadline relief for employer plans and employee benefit elections and payments. “For group health plans, ... the relief provides additional time to comply with certain deadlines affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims. With regard to disability, retirement, and other plans, the joint notice provides additional time for participants and beneficiaries to make claims for benefits and appeal denied claims.”

We have [previously shared with you](#) automatic Form 5500 extensions for returns due between March 1 and July 14, 2020 to now be due July 15, 2020 (this now also applies to Form M-1 filings and extensions within that time frame). This newest relief additionally says an “Outbreak Period” from March 1, 2020 until 60 days after the announced end of the COVID-19 emergency is to be completely disregarded for several purposes outlined below. We’ll also include examples of how to apply each extension, using the date of this alert (April 30) as a hypothetical “announced end” of the emergency, which would illustratively make the disregarded Outbreak Period March 1, 2020 through June 29, 2020 (60 days following April 30). To be clear, as of April 30 we do not yet have an announced end date for the crisis and these dates are for illustration only.

1. HIPAA 30-day special enrollment rights (60 days for Medicaid/CHIP events)

Example using our illustrative dates: If an individual gave birth March 31, 2020, instead of notifying the employer by April 30, the Outbreak Period (illustratively March 1 through June 29) is disregarded. The 30-day election window would illustratively begin June 30, giving them until July 29 to make an election for coverage retroactive to the birth and to pay all premiums.

2. COBRA deadlines for employers or participants to notify the plan of a qualifying event and for the plan to provide the participant a subsequent notice

Participant example using our illustrative dates: If an employee and spouse divorce March 31, instead of notifying the plan by May 30, the participant must notify the employer by August 28 to preserve COBRA rights.

Employer example using our illustrative dates: If an employee terminates employment March 31, instead of having to notify the plan by April 30, the employer must notify the plan by July 29 of the event and the plan would then have 14 days to provide the required COBRA notice.

3. COBRA 60-day deadline for participant to notify the plan of a disability determination

Example using our illustrative dates: If a COBRA participant received a Social Security determination of disability on March 31 indicating the participant had been disabled within the first 60 days of COBRA, instead of notifying the plan by May 30, the participant must notify the plan by August 28 to qualify for the disability extension.

4. COBRA 60-day election windows

Example using our illustrative dates: If a participant experienced a COBRA-triggering loss of coverage in March and was provided an election notice April 1, 2020, instead of having until May 31, the participant has until August 28 to make an election for coverage retroactive to April 1.

5. COBRA payment windows (typically first payment for new elections is required within 45 days of election, and subsequent payments are due monthly followed by a 30-day grace period for short/missing payments)

Example using our illustrative dates: If a COBRA participant's premium was due March 1, 2020, instead of having until March 31 for a grace period to make up a short/misplaced payment, the Outbreak Period is disregarded. Therefore, the 30-day grace period would begin June 30, giving the participant until July 29 to make up the short/misplaced March payment, as well as payments that were due April 1, May 1, and June 1. If they only make up the March and April payments by then but not the May or June payments, then COBRA only lasted through April 30, and claims incurred from May 1 forward would need to be reprocessed for failure to pay premium by the July 29 grace period date.

6. Timely submission of claims, appeals, or requests for external review

Claims example using our illustrative dates: If the plan normally requires claims be submitted within 365 days of the date of service, a date of service during the Outbreak Period would not have to be submitted until 365 days after June 29, 2020.

Appeals example using our illustrative dates: If the plan normally requires an appeal be submitted within 180 days of the notice of an adverse benefit determination, all days during the Outbreak Period are disregarded. Days prior to March 1 still count, but then the 180-day limit doesn't resume counting days until after the Outbreak Period is over. So an adverse benefit notice on January 28 would have gone through 32 days before March 1 and have 148 days remaining, giving the participant until November 24 to appeal.

7. **General employer flexibility to “act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.”**

This flexibility also applies to certain disclosures “if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.”

Regulators also provided some basic [FAQs](#) to help employees understand options available to them when eligibility is lost, the employer is closed, or when family members are losing benefits because of the employee’s death. However, we are still not seeing any relief related to health care or daycare flexible spending accounts or to voluntarily dropping any coverage due to economic hardship. We’ll keep an eye out for any official relief on those fronts.



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