



COMPLIANCE ALERT



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The Department of Labor Issues COVID-19 Relief and Guidance for Employee Benefit Plans

Introduction

The Department of Labor (DOL) issued deadline relief and other guidance under the Employee Retirement Income Security Act (ERISA) to help employee benefit plans, plan participants and beneficiaries, employers, and other plan sponsors impacted by the COVID-19 outbreak. The DOL issued a [News Release](#) that included [Disaster Relief Notice 2020-01](#), which extends the time for plan officials to furnish benefit statements, annual funding notices, and other notices and disclosures required by ERISA as well as a tri-agency [Joint Notice](#) that extends certain time frames affecting a participant's right to healthcare coverage, portability, and COBRA continuation as well as extending claims and appeals deadlines. Finally, the DOL issued a set of [Frequently Asked Questions \(FAQs\)](#) on health and retirement benefit issues to help employee benefit plan participants and beneficiaries, plan sponsors, and employers impacted by the COVID-19 outbreak understand their rights and responsibilities under ERISA.

Joint Notice

The DOL, Internal Revenue Service, and Health and Human Services (the Agencies) announced the extension of certain timeframes under ERISA and the Internal Revenue Code (Code) for group health plans, disability and other welfare plans and pension plans during the COVID-19 National Emergency.

Standard Timeframes:

- **HIPAA Special Enrollment**
HIPAA requires a special enrollment period in certain circumstances, including when an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled (including coverage under Medicaid and the Children's Health Insurance Program (CHIP)), and when a person becomes a dependent of an eligible employee by birth, marriage, adoption, or placement for adoption. A group health plans must allow such individuals to enroll if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event (or within 60 days, in the case of a CHIP special enrollment right).

- **COBRA**
The COBRA continuation coverage provisions provide a period of at least 60 days to elect COBRA continuation coverage under a group health plan. Plans are required to allow payment of premiums in monthly installments, and plans cannot require payment of premiums before 45

days after the day of the initial COBRA election. COBRA continuation coverage may be terminated for failure to pay premiums timely. A premium is considered paid timely if it is made not later than 30 days after the first day of the period for which payment is being made.

▪ **Claims and Appeals Procedures**

ERISA-covered employee benefit plans and non-grandfathered group health plans to establish and maintain a procedure on the filing and initial disposition of benefit claims, and to provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

▪ **External Relief Process**

Standards for external review processes and timeframes for submitting claims to the independent reviewer for group health plans or health insurance issuers may vary depending on whether a plan uses a State or Federal external review process. For plans or issuers that use the Federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed. The Federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the Federal external review process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48-hour period following the receipt of the notification, whichever is later.

Relief for Plan Participants and Beneficiaries: All group health plans, disability and other employee welfare benefit plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies in a future notice (“**the Outbreak Period**”) for all plan participants, beneficiaries, qualified beneficiaries, or claimants.

- The 30-day period (or 60-day period, if applicable) to request special enrollment;
- The 60-day election period for COBRA continuation coverage;
- The deadline for making COBRA premium payments;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The deadline for individuals to file a benefit claim under the plan’s claims procedure;
- The deadline by which claimants must file an appeal of an adverse benefit determination under the plan’s claims procedure;
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The deadlines for claimants to file information related to a request for external review.

Relief for Group Health Plans: The Outbreak Period will be disregarded when determining the deadline for providing a COBRA election notice (generally 44 days).

Examples of Timeframe Extensions: To the extent there are different Outbreak Period end dates for different parts of the country, the Agencies will issue additional guidance regarding the application of the relief in this notice. An assumed end date for the National Emergency is needed to make the examples clear and understandable. The following examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending on June 29, 2020 (the 60th day after the end of the National Emergency).

- *Electing COBRA:*

Q: Sam experiences a qualifying event for COBRA purposes as a result of reduction in hours below the hours to meet the group health plan's eligibility requirements. Sam receives his COBRA election notice on April 1, 2020. What is the deadline for Sam to elect COBRA?

A: The Outbreak Period is disregarded for purposes of determining Sam's COBRA election period. The last day of Sam's COBRA election period is 60 days after June 29, 2020, which is August 28, 2020.

- *Special Enrollment Period:*

Q: Amy gives birth on March 31, 2020 and would like to enroll herself and her child. Amy was eligible for but previously declined coverage in her employer's group health plan. The employer's open enrollment does not begin until November 15, 2020. When can Amy exercise her special enrollment rights?

A: The Outbreak Period is disregarded for purposes of determining Amy's special enrollment period. Amy and her child qualify for special enrollment into her employer's plan as early as the date of the child's birth. Amy may exercise her special enrollment rights for herself and her child into her employer's plan until 30 days after June 29, 2020, which is July 29, 2020, provided that she pays the premiums for any period of coverage.

- *COBRA premium payment:*

Q: On March 1, 2020, Matthew was receiving COBRA continuation coverage. More than 45 days had passed since Matthew had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. Matthew made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Matthew has made no premium payments for March, April, May, or June. Does Matthew lose COBRA coverage, and if so for which month(s)?

A: The Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. Premium payments made by 30 days after June 29, 2020, which is July 29, 2020, for March, April, May, and June 2020, are considered timely, and Matthew is entitled to COBRA continuation coverage for these months if he timely makes payment. Under the terms of the COBRA statute, premium payments are timely if made within 30 days from the date they are first due. In calculating the 30-day period, however, the Outbreak

Period is disregarded, and 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. Matthew is eligible to receive coverage during this interim period even though some or all of Matthew's premium payments may not be received until July 29, 2020. Matthew's insurer or plan may not deny coverage, and may make retroactive payments for benefits and services received by the participant during this time.

- *Claims for medical treatment under a group health plan:*

Q: On March 1, 2020, Kevin received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Was Kevin's claim timely?

A: Yes. For purposes of determining the 365-day period applicable to Kevin's claim, the Outbreak Period is disregarded. Therefore, Kevin's last day to submit a claim is 365 days after June 29, 2020, which is June 29, 2021, so Kevin's claim was timely.

- *Internal appeal- disability plan:*

Q: Margaret received a notification of an adverse benefit determination from her disability plan on January 28, 2020. The notification advised Margaret that there are 180 days within which to file an appeal. What is her appeal deadline?

A: When determining the 180-day period within which Margaret's appeal must be filed, the Outbreak Period is disregarded. Therefore, Margaret's last day to submit an appeal is 148 days (180 – 32 days following January 28 to March 1) after June 29, 2020, which is November 24, 2020.

EBSA Disaster Notice 2020-01

The Disaster Notice includes the Form 5500 Annual Return/Report relief which is an extension to July 15th that applies to deadlines in connection with 5500 filings due **on or after April 1, 2020, and before July 15, 2020** (e.g., plans years ending September 30, October 31, or November 30). The extension is automatic and does not require any specific action by the affected parties. Calendar year plans would normally have a July 31st 5500 filing deadline so will not benefit from this limited relief. Form M-1 filings required for multiple employer welfare arrangements (MEWAs) and certain entities claiming exception (ECEs) are provided relief for the same period of time as the Form 5500 Annual Return/Report filing relief.

DOL FAQs

The health benefit FAQs address a series of questions around employer location closures, termination of benefits and COBRA. Employees are encouraged to reach out directly to their employers to request their plan's Summary Plan Description (SPD) for plan coverage information, to obtain claim forms and how and where to send COBRA premiums. The FAQs detail what happens in an event a spouse dies from COVID-19 and the interaction between COBRA and the employer paying for health premiums for a specified period of time. The FAQ confirms that a COBRA qualified beneficiary will have a special enrollment opportunity onto an exchange plan on the expiration of an employer's COBRA subsidy (note this position does not extend to employer plans and is not supported by regulations on

exchange enrollment but is good news for qualified beneficiaries). Also, the DOL confirms that the Federal Unemployment compensation of \$600/week can be used, but not required to be used, for COBRA or other health care premiums.

Conclusion

We will continue to monitor this very fluid situation and provide the latest information on the COVID-19 pandemic, including emerging legal challenges and practical recommendations. Our full suite of resources is available on [Alliant's COVID-19 Resource Page](#).

Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits

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