

IMPORTANT COVID-19 UPDATE

GUIDANCE ON EXTENSION OF COVID-19 OUTBREAK PERIOD

Last year, federal agencies announced timing extensions for a host of deadlines for plans and participants that apply during the COVID-19 “Outbreak Period”. The defined Outbreak Period was intended to help plans, participants and service providers by extending deadlines affecting COBRA coverage, HIPAA special enrollment periods, claims and appeals for benefits, and for certain notices and disclosures required under the Employee Retirement Income Security Act (ERISA). See our May 2020 [update](#) for a detailed summary of the 2020 Outbreak Period guidance.

Under the 2020 Outbreak Period guidance, the special “Outbreak Period” began on March 1, 2020, and was intended to last until 60 days after the announced end of the “National Emergency”. By law the extended period was not to exceed one year, which means unless additional guidance was issued, the Outbreak Period deadline was set to expire on February 28, 2021. But as it became clear that the National Emergency would continue for a substantial period of time (note that President Biden [just extended it](#)), questions arose as to how the agencies would interpret the one-year outer limit.

New Guidance

The federal agencies have now issued new [guidance](#) (Notice 2021-01) on the extension of the Outbreak Period. Unfortunately, this guidance will significantly increase burdens and complexity for plan sponsors and cause further confusion for participants. The new guidance indicates that individuals and plans with timeframes subject to the relief will have the applicable periods disregarded until the earlier of one year from the date they were first eligible for relief, or 60 days after the announced end of the National Emergency (the end of the Outbreak Period). This means the Outbreak Period remains ongoing, and instead of applying the one year period to the March 1, 2020 start date of the Outbreak Period for everyone, it applies it on an individual-by-individual basis resulting in an individual “tolling” concept.

Examples

The new guidance requires plan sponsors to determine the duration of the relief on a person-by-person basis. The following are examples of how the guidance would apply to different circumstances.

COBRA

- COBRA election period started 2/1/20 (before the 3/1/20 start of the Outbreak Period). The normal 60 day timeline had already begun to run, but then is tolled starting 3/1/20. The one-year suspension period would end 2/28/21, so the election period would start again as of 3/1/21, and the qualified beneficiary would have the balance of the 60-day election period.
- COBRA election period started 3/1/20. The election deadline is tolled starting 3/1/20. The one-year tolling period would end 2/28/21, so the 60-day election period would start 3/1/21.
- COBRA election period started 6/1/20. The election deadline is tolled as of 6/1/20. The one-year tolling period would end 5/31/21, so the 60-day election period would start 6/1/21.
- COBRA election period started 11/1/20. The election deadline is tolled as of 11/1/20. The one-year tolling period would end 10/31/21 (as long as National Emergency continues), so the 60-day election period would start 11/1/21.
- COBRA election period starts 4/1/21. The election deadline is tolled as of 4/1/21. The one-year tolling period would end 3/31/22 (as long as National Emergency continues), so the 60-day election period would start 4/1/22.
- COBRA qualified beneficiary enrolls in COBRA coverage and makes several payments but fails to make the COBRA payment for November 2020 coverage by the normal grace period of 11/30/20. The payment deadline is tolled as of 11/30/20. The one-year tolling period would end 11/30/21 (as long as National Emergency continues), so the payment deadline would be 11/30/21.

HIPAA Special Enrollment

- Employee has a baby on 11/1/20. The election deadline is tolled as of 11/1/20. The normal 30 day timeline to notify the employer is by 12/1/20. The one-year tolling period would end 10/31/21 (as long as National Emergency continues), so the 30-day election period (for coverage retroactive to the date of birth) would start 11/1/21.
- Employee gets married on 4/1/21. The election deadline is tolled as of 4/1/21. The normal 30 day timeline to notify the employer is by 5/1/21. The one-year tolling period would end 3/31/22 (as long as National Emergency continues), so the 30-day election period (for prospective coverage after the date of the election) would start 4/1/22.

Claim Filing Deadlines

- Health FSA plan normal claim filing deadline requires that participants submit all claims incurred during the 2020 calendar year plan year within 3 months after the end of the plan year (or by 3/31/21). The claim filing deadline is tolled as of 12/31/20. The one-year tolling period would end 12/31/21 (as long as National Emergency continues), so the 3 month claim filing period would end 3/31/22.

Next Steps

Employers and plan sponsors will need to ensure their COBRA vendors and third party administrators have adopted the necessary measures to comply with and administer the new changes. It is essential to be in immediate contact with vendors in this area to ensure their readiness and adherence to the changes and the new deadlines. Also, employers will need to consider how, if and when to communicate revised deadlines for elections, payments, and losses of coverage. The guidance seems to suggest that plans may need to notify each individual when his or her one-year extension is about to be up and plans may need to update prior communications that did not anticipate this new guidance.

- Consider whether new notices should be issued with updated coverage and rate options, and current election and payment deadlines for individuals who have deferred making a COBRA election for any periods on or after March 1, 2020.
- Consider providing notice regarding payment for all prior month premiums that may be owing for those who are already enrolled in COBRA but who have been deferring payment for coverage.
- Consider communications to let participants know of other coverage options and the [recently announced](#) COVID-19 special enrollment period via [healthcare.gov](https://www.healthcare.gov) (which may offer a less expensive option for many and does not require retroactive enrollment to the date coverage was lost as required under COBRA.)

While the new guidance finally provides some answers, the individual-by-individual nature of the relief and the fact that it appears the Outbreak Period could last for a significant period of time imposes increased burdens and administrative complexity on plan sponsors. This will cause confusion for individuals and the entire matter raises a number of questions as to how the new guidance will interact with any COBRA subsidies (if they become law).

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