

COMPLIANCE OVERVIEW

COVID-19 Relief Extends Certain Employee Benefit Plan Deadlines

On April 28, 2020, the Departments of Labor (DOL) and the Treasury (Departments) issued deadline relief to help employee benefit plans, plan participants and plan service providers impacted by the COVID-19 outbreak.

This Compliance Overview summarizes the participant deadline extensions affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims and external review of certain claims.

It also includes the deadline extension pursuant to the DOL's Disaster Relief Notice 2020-01, for notices and disclosures required under the Employee Retirement Income Security Act (ERISA).

Relief Period

The deadlines included in this Compliance Overview are extended by **disregarding the period from March 1, 2020, until 60 days after the announced end of the National Emergency** (or such other date announced by the Departments). This is referred to as the "Outbreak Period" and cannot exceed one year. To the extent there are different end dates for different parts of the country, additional guidance is expected.

LINKS AND RESOURCES

- Departments' [final rule](#) on the extension of timeframes
- DOL's [Disaster Relief Notice 2020-01](#)
- [COVID-19 FAQs for Participants and Beneficiaries](#) from the DOL

Participant Extensions

A final rule extends the timeframes for health plan participants to:

- Request special enrollment under HIPAA;
- Elect COBRA continuation coverage, pay COBRA premiums and notify the plan of a COBRA qualifying event; and
- File benefit claims and appeals and request external review of denied claims.

ERISA Notices & Disclosures

DOL Disaster Relief Notice 2020-01 extends the time for plan officials to furnish benefit statements and other notices and disclosures required under ERISA, if good faith efforts are made to provide the documents as soon as administratively practicable.

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Extended Participant Deadlines

The Departments issued a [final rule](#) to provide plan participants with 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. These deadlines are summarized below.

HIPAA Special Enrollment Time frames

To make health coverage more portable, the Health Insurance Portability and Accountability Act (HIPAA) requires group health plans to provide special enrollment opportunities outside of the plans' regular enrollment periods in certain situations, provided enrollment is requested within 30 days of the occurrence (or within 60 days in the case of loss of, or eligibility for premium assistance under, Medicaid or CHIP coverage).

The final rule **extends the 30-day period (or 60-day period, if applicable) to request special enrollment**, as illustrated in the example below. For purposes of the example, the National Emergency ends on April 30, 2020, with the Outbreak Period ending June 29, 2020.

Special Enrollment Example

Facts: Individual A is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual A gave birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until Nov. 15. When may Individual A exercise her special enrollment rights?

Conclusion: Disregarding the Outbreak Period, Individual A 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 she pays the premiums for any period of coverage.

COBRA Time frames

The Consolidated Omnibus Budget Reconciliation Act (COBRA), prescribes time periods for electing coverage, paying premiums, and notifying the plan of certain qualifying events. The final rule extends the following COBRA timeframes:

- The **60-day period** for qualified beneficiaries to elect COBRA coverage;
- The date for making COBRA premium payments (at least **45 days** after the day of the initial COBRA election, and a grace period of at least **30 days** for subsequent premium payments); and
- The date for individuals to notify the plan of a qualifying event or disability determination (in general, at least **60 days** from the date of the event, loss of coverage or disability determination).

The following examples illustrate the extensions for qualified beneficiaries to elect and make premium payments for COBRA coverage. For purposes of these examples, the National Emergency ends on April 30, 2020, with the Outbreak Period ending June 29, 2020.

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COBRA Election Example

Facts: Individual B works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual B, who has no other coverage, experiences a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements (a COBRA qualifying event). Individual B is provided a COBRA election notice on April 1, 2020. What is the deadline for Individual B to elect COBRA?

Conclusion: Disregarding the Outbreak Period, the last day of Individual B's COBRA election period is 60 days after June 29, 2020, which is August 28, 2020.

COBRA Premium Payment Examples

Facts: On March 1, 2020, Individual C was receiving COBRA continuation coverage. More than 45 days had passed since she elected it. Monthly premium payments are due by the first of the month. The plan does not permit longer than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period.

Additional Facts: As of July 1, Individual C has made no premium payments for March, April, May or June. Does Individual C lose COBRA coverage, and if so for which months?

Conclusion: Because the Outbreak Period is disregarded, premium payments for all four months are due 30 days after June 29, 2020. Thus, as long as Individual C makes all of the premium payments by July 29, 2020, she is eligible to receive COBRA continuation coverage during March, April, May and June.

Additional Facts: By July 29, 2020, Individual C made a payment equal to only two months' worth of premiums. For how long does Individual C have COBRA continuation coverage?

Conclusion: Individual C is entitled to COBRA continuation coverage for March and April, the two months for which timely premium payments were made. She is not entitled to coverage for any month after that.

Claims Procedure Time frames

Group health plans covered by ERISA are required to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. The following claims procedure time frames are extended by the final rule:

- The date within which individuals may file a benefit claim under the plan's claims procedure; and
- The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure.

The following example, related to claims for medical treatment under a group health plan, illustrates this extension. For purposes of the example, the National Emergency ends on April 30, 2020, with the Outbreak Period ending June 29, 2020.

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Claims Deadline Example

Facts: Individual C received medical treatment for a condition covered under his plan on March 1, 2020, but he did not submit a claim for the medical treatment until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant’s receipt of the medical treatment. Was Individual C’s claim timely?

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

External Review Process Time frames

Non-grandfathered group health plans are subject to additional standards for external review of benefit claim appeals. Standards for external review processes and time frames for submitting claims to the independent reviewer may vary depending on whether the group health plan uses a state or federal external review process. The following time frames are extended by the final rule:

- The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete.

Deadline Extension for ERISA Notices and Disclosures

In addition to the deadline relief above, the DOL issued [Disaster Relief Notice 2020-01](#) to extend the time for plan officials to furnish benefit statements and other notices and disclosures required under ERISA, so that plan sponsors have additional time to meet their obligations during the COVID-19 outbreak.

Accordingly, an employee benefit plan will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished **between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency** (provided this period does not exceed one year), if they act in good faith. This means the plan must furnish the documents as soon as administratively practicable under the circumstances.

Good faith acts include use of **electronic means of communicating** with plan participants who the plan sponsor reasonably believes have effective access to electronic means of communication, including email, text messages and continuous access websites.

Key notices and disclosures required to be furnished under ERISA include the following:

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| • Summary Plan Description (SPD) |
| • Summary of Material Modifications (SMM) |
| • Summary of Benefits and Coverage (SBC) |

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• Notice of Patient Protections
• Disclosure of Grandfathered Status
• Wellness Program Disclosure (HIPAA)
• Employer CHIP Notice
• Newborns' and Mothers' Health Act Notice
• Women's Health and Cancer Rights Act Notices

Note that this chart is not all-inclusive, and certain notice requirements may depend on a number of factors, including the type of benefits offered under the health plan.

Separate Form 5500 Relief Available

The deadline extension contained in Disaster Relief Notice 2020-01 **does not apply** to Forms 5500, as separate Form 5500 filing relief is provided by [IRS Notice 2020-23](#). IRS Notice 2020-23 extends the Form 5500 filing deadline for ERISA-covered welfare plans that have an original or extended filing deadline **on or after April 1, 2020, and before July 15, 2020**. These plans have until **July 15, 2020** to file their Forms 5500.