



ALERTS

Key Benefit Plan Participant Deadlines Extended During COVID-19 Outbreak

May 15, 2020

Highlights

During the COVID-19 pandemic, employee benefit participants have been given more time to request special enrollment into a medical plan

For COBRA continuation coverage, notice periods, elections periods, and premium due dates have been extended

Administration of these extended time periods are likely to be challenging for employee benefit plans and their administrators

Employee benefit participants now have relief from deadlines and other requirements imposed by law and regulations. The Department of Labor (DOL), Employee Benefits Security Administration (EBSA), Department of Treasury (Treasury), and the Internal Revenue Service (together, Agencies), issued a [joint notice of relief extending timeframes](#) under ERISA and the Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 National Emergency (Joint Notice).

The Joint Notice applies retroactively to March 1, 2020, the beginning of the COVID-19 National Emergency as declared by President Trump.

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The relief granted by the Agencies is available to participants and beneficiaries in ERISA group health plans, disability plans, and retirement plans, and provides additional time to comply with certain deadlines for COBRA continuation coverage, special enrollment rights, and filing or appealing claims for benefits required by ERISA and/or the Internal Revenue Code (Code). The Agencies also [extended some deadlines and requirements for plan sponsors and fiduciaries](#) through separate guidance.

The Agencies expressed the relief was necessary due to concerns that the COVID-19 National Emergency may hinder participants and beneficiaries from exercising special enrollment or continuation of group health plan coverage rights and from filing benefit claims and appeals. Although the Agencies' recognition of the difficulties faced by participants during this pandemic is warranted, the relief provided for participants and beneficiaries is likely to be administratively burdensome and to impose additional uncertainty upon the employee benefit plans.

Extended Deadlines for Plan Participants and Beneficiaries

Under the Joint Notice, welfare benefit plans and pension benefit plans covered by ERISA or certain provisions of the Code are required to disregard the period from March 1, 2020, until 60 days following the announced end of the COVID-19 National Emergency (Outbreak Period) for the specified deadlines for participants, beneficiaries and claimants. There is also a permitted extension by the Outbreak Period for one plan administrator notice to qualified beneficiaries under COBRA. Currently, the end of the Outbreak Period is unknown, which presents a significant challenge for administering employee benefit plans.

Special Enrollment Rights

The special enrollment periods for eligible employees and dependents are extended by the Outbreak Period. ERISA provides participants and their eligible dependents with the right to enroll in a medical plan during the plan year, if they:

- Previously declined enrollment and they lose medical coverage for certain reasons
- Have a new eligible dependent (birth, adoption, placement for adoption, or marriage)
- Lose coverage under Medicaid or a state child health insurance plan (CHIP)
- Become eligible for premium assistance for CHIP

The participant must request enrollment no later than 30 days after the loss of coverage or birth, adoption or marriage. For loss of CHIP coverage or becoming eligible for CHIP premium subsidies, the participant has 60 days to request enrollment. These 30-day and 60-day periods are extended by the Outbreak Period.

Example – If the COVID-19 National Emergency ended on April 30,

2020, then the Outbreak Period would be from March 1, 2020, to June 29, 2020. If a participant gave birth to a child on March 31, 2020, the participant may enroll herself and the child no later than July 29, 2020, (30 days after June 29, 2020, the end of the Outbreak Period).

COBRA Continuation Coverage Notices and Elections

Under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), participants and dependents covered by a group health plan (e.g. medical, dental, vision, health reimbursement accounts, and health care flexible spending accounts) have the right to continue the group health plan coverage when they would otherwise lose group health coverage due to a qualifying event. Qualifying events include termination of employment or reduction in hours, divorce or legal separation, a dependent child's loss of eligibility for coverage as an eligible dependent, a participant's death, or entitlement to Medicare.

The Outbreak Period is disregarded for purposes of the following COBRA notice periods, election periods and premium payment due dates.

- **Notice of Certain Qualifying Events** – For a divorce or legal separation or a dependent child's loss of eligibility for coverage as an eligible dependent, the participant or another qualified beneficiary needs to notify plan administrator within 60 days of the qualifying event or loss of group health plan coverage, whichever is the later.
- **Plan Administrator's COBRA Election Notice to Qualified Beneficiary** – After the plan administrator has been notified of a qualifying event, the plan administrator needs to provide COBRA election notices to qualified beneficiaries within 14 days (44 days where the employer is the plan administrator).
- **Qualified Beneficiary Period to Elect to Continue Group Health Plan Coverage Under COBRA (COBRA Election Period)** – A qualified beneficiary has 60 days from the date the plan administrator provides the required COBRA election notice to the qualified beneficiary to submit his or her election to enroll in the COBRA continuation coverage.
- **COBRA Premium Payment** – The first COBRA coverage premium payments must be received by plan administrator no later than 45 days after COBRA continuation coverage is elected initially. Premiums for every month of COBRA continuation coverage following the initial premium payment period must be paid no later than 30 days after the due date.
- **Notice of Social Security Administration (SSA) Disability Determination** – For COBRA coverage extension due to SSA disability determination related to a qualified beneficiary before qualifying event or within the first 60 days of COBRA coverage, a qualified beneficiary must provide notice of the SSA disability determination to the plan administrator (before the 18-month COBRA coverage period ends) within 60 days of the latest of the SSA disability

determination date, qualifying event, or loss of coverage due to qualifying event.

Example – If the COVID-19 National Emergency ended on April 30, 2020, then the Outbreak Period would be from March 1, 2020 to June 29, 2020. If a participant in a group health plan loses coverage due to a termination of employment (qualifying event) and was provided a COBRA election notice on April 1, 2020, then the last day of the election period would be 60 days after June 29, 2020 (the Outbreak Period end date), which is Aug. 28, 2020.

Another Example – Using the same Outbreak Period from the above example, a qualified beneficiary is receiving COBRA continuation coverage as of March 1, 2020. Monthly premium payments are due by the first of the month and there is a 30-day grace period. The qualified beneficiary made payments through February 2020, but did not make payments for March, April and May. Premium payments made by 30 days after June 29, 2020, (the end of the Outbreak Period), which is July 29, 2020, for March, April, May and June 2020 are timely payments and the qualified beneficiary is entitled to COBRA coverage for these months.

ERISA Claims and Appeals Procedures

ERISA and the related regulations impose specific deadlines for filing appeals of denied claims and requesting external review of certain denials, and require benefit plans to have a procedure to file benefit claims that does not unduly inhibit the initiation of the claims for benefits.

Deadlines for filing claims for benefits in procedures will need to be reasonably relaxed during the Outbreak Period. The other due dates for filing appeals and request for external review are extended by the Outbreak Period.

Group health plan and disability plan participants have 180 days from receipt of the benefit claim denial (adverse benefit determination) to file an appeal with the plan. Other ERISA plan participants have 60 days from receipt of the benefit claim denial (adverse benefit determination) to file an appeal with the plan.

A participant in a medical plan (except non-grandfathered group health plans) may request an external review of final internal benefit appeal denial (or adverse benefit determination) involving a rescission of coverage or medical judgement (medical necessity, experimental or investigational treatments, reasonable alternative standard for a reward under a wellness program, or compliance with nonquantitative treatment limitation for behavioral health) within four months of the internal appeal denial. The Outbreak Period is disregarded for these appeal deadlines.

Example – If the COVID-19 National Emergency ended on April 30, 2020, then the Outbreak Period would be from March 1, 2020, to June 29, 2020. A participant received notice of a denied disability benefit claim on Jan. 28, 2020, and the notice informed the participant that he or she had 180 days to appeal the decision. Disregarding the Outbreak Period, the last day to file the appeal is 148 days (180 – 32 days from Jan. 28, 2020 to March 1, 2020) after June 29, 2020 (the end of the Outbreak Period) or Nov. 24, 2020.

Plan Sponsor Action Steps to Consider

During these uncertain times, plan sponsors should consider the following best practices:

- Contact the COBRA administrator for the plan, if any, to determine the administrative process for the extended deadlines, including how group health plan claims will be handled during the qualified beneficiary's election period and time period to pay COBRA premiums
- Coordinate with plan service providers, claims administrators and legal counsel to revise or supplement forms and claims procedures, to modify plan administration, and to incorporate the temporarily extended deadlines for plan participants and beneficiaries
- Communicate with plan participants and beneficiaries regarding the relief provided through such modified deadlines

To obtain more information regarding this alert, please contact the Barnes & Thornburg attorney with whom you work or Nicole Bogard at 404-264-4016 or nicole.bogard@btlaw.com, or Lori Shannon at 312-214-5664 or lori.shannon@btlaw.com.

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