



New Benefit Plan Deadline Extensions Provide Opportunities For Participants – And Burdens For Plan Sponsors

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The Department of Labor (DOL), in coordination with the IRS and the Treasury Department, recently issued new rules extending key deadlines for health, retirement, and welfare plans subject to ERISA and the Internal Revenue Code. Per a HHS memorandum released May 14, non-federal governmental plans are encouraged, but not required, to adopt the notice extensions. The deadline extensions contained in Notice 2020-01 and Final Rule 85 FR 26351 are intended to provide relief to plan sponsors and participants impacted by COVID-19. However, the significant flexibility provided to participants under these extensions give rise to administrative complexities that employers will likely consider burdensome, time consuming, and costly.

Key Extensions

The following checklist of key extensions are retroactive to March 1, 2020 and generally extend through the “Outbreak Period” defined as “the National Emergency Period (the end which is TBD) through 60 days after the National Emergency Period.”

Permitted Employer Extensions (assumes good faith):

- Extends time for plans to furnish ERISA-required notifications to “as soon as administratively practicable”
- summaries of material modification(s) (SMM) and summary plan description(s) (SPD)

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- benefit/claims determinations
- blackout notices (30-day advanced notice as well as notices required after the blackout period begins)
- Extends COBRA Election Notice provision timeline (the 44-day timeframe for provision of notice to a qualified beneficiary) by disregarding the Outbreak Period

In addition to formal extensions, the DOL will not take enforcement actions for temporary delays in forwarding participant contributions or loan repayments if the delays are attributable solely to the COVID-19 outbreak and compliance is achieved as soon as administratively practicable under the circumstances. The Notice also encourages fiduciaries to make reasonable accommodations to prevent payment delays and benefit losses.

Permitted Employee Extensions:

- Extends 30 and 60-day HIPAA Special Enrollment timeframes by disregarding the Outbreak Period
- Extends an ERISA plan's benefit claim filing deadlines (under the plan's claims procedures) by disregarding the Outbreak Period. **This includes extending health flexible spending arrangement (health FSA) and Health Reimbursement Account (HRA) run out periods still in effect as of March 1, 2020, by disregarding the Outbreak Period**
- Extends an ERISA plan's deadline to file appeal of adverse benefit determination (180-day timeframe under a group health plan or disability plan) by disregarding the Outbreak Period
- Extends an ERISA plan's deadline to file an external review request (four months for federal review, may be different for state), or provide additional information to perfect a request (four months (or 48 hours following receipt of incomplete request notification, if later)) by disregarding the Outbreak Period
- Extends COBRA Qualifying Event Notice Deadlines (60-day employee notification for qualifying event) by disregarding the Outbreak Period
- Extends the COBRA Election Period (60-day timeframe/deadline for a qualified beneficiary to elect COBRA) by disregarding the Outbreak Period
- Extends COBRA Premium Payment Periods (45 days from COBRA election date to make initial premium deadline (or 30-day grace for subsequent premium payment deadlines, starting at the beginning of coverage month)) by disregarding the Outbreak Period

Administrative And Procedural Challenges



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Plan Sponsors, insurers, TPAs, COBRA administrators, and stop-loss insurers are independently and collectively wrestling with the practical implications of these new rules. For example, through the end of the Outbreak Period, which is yet to be determined, participants are not subject to deadlines to request HIPAA special enrollments, nor must they notify the plan of a qualifying event – so employers may not know until third quarter 2020, or later, whether they have to extend group health coverage to employees and dependents retroactive to March 1.

Similarly, COBRA qualified individuals do not have to notify the plan of COBRA qualifying events, elect COBRA, or pay COBRA premiums, providing participants extensive opportunity to take a “wait and see” approach while simultaneously obligating employers to reinstate coverage retroactively and/or advance premium payments for many months. The benefit claims and appeal extensions will no doubt create administrative and procedural complexities for plan administrators, TPAs, and independent review organizations.

Finally, extending Health FSA and HRA run out periods allows participants to more fully exhaust their account balances. This simultaneously reduces employer forfeitures.

Practice Notes

- Although you are permitted to delay COBRA election notices, most administrators will want to timely provide these notices. Note, even if you choose to delay election notice provision, COBRA coverage has to be extended upon participant election.
- Given the uncertainty of the end of the Outbreak Period, employers may also have to be prepared to address questions from employees and COBRA beneficiaries.
- There is no indication that plan amendments generally are necessary for this temporary relief, but depending on the language in plan documents and policies, review and amendment may be needed.
- While many sponsors will conclude it best, perhaps as a fiduciary requirement, to provide participants with notice of HIPAA special enrollment, benefit claim and appeal, and COBRA extension opportunities, it is interesting to note that the DOL’s updated Model COBRA Notices do not address the extension changes suggesting employers are not responsible for updating COBRA notices to reflect the extension – or possibly even responsible for notifying employees of the COBRA extensions.

Conclusion

There are many moving parts and questions associated with these new rules. How you move forward will, in many instances, depend on whether your plan is insured or self-insured, your COBRA administrator’s procedures, and your stop-loss carrier’s position. You may certainly use the DOL’s



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updated Model COBRA Notices, but we recommend that you consult an experienced benefits attorney when determining the best method and timing for moving forward.

For more information, contact the author here.