

ADDITIONAL COVID-19 EXTENSIONS = GREATER ADMINISTRATIVE HEADACHES FOR PLAN SPONSORS

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As any employer is keenly aware, the administration of an employee benefit plan (especially a group health plan) involves a number of different deadlines imposed under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code). Amidst concerns that the current COVID-19 pandemic may cause individuals to lose benefits due to the failure to meet certain pre-established deadlines and in recognition of the challenges group health plans may face in complying with certain notice obligations, the Department of Labor and Internal Revenue Service (collectively, the “Agencies”) jointly published notice in the [Federal Register](#) of a significant extension in application of the following statutorily prescribed deadlines:

Special Enrollment Periods

- 30-day deadline to request enrollment in the event of a loss of eligibility for other health coverage or the acquisition of a new dependent due to marriage, birth, adoption or placement for adoption
- 60-day deadline to request enrollment in the event of either a loss of eligibility for coverage under Medicaid or a state children’s health insurance coverage (CHIP) or gaining eligibility for premium assistance through Medicaid or CHIP.

COBRA Continuation Coverage

- 30-day period for employer to notify plan administrator of certain COBRA qualifying events
- 14-day period for plan administrator to issue COBRA Election Notice to qualified beneficiary
- 60-day period for qualified beneficiary to elect COBRA continuation coverage
- 45-day period for qualified beneficiary to submit initial COBRA premium payment
- 30-day period for qualified beneficiary to submit subsequent COBRA premium payments

- Qualified beneficiary's notification of the occurrence of a COBRA qualifying event or second COBRA qualifying event
- Qualified beneficiary's notification of a determination of disability

Claims Administration

- Date established by the plan within which a claimant must file a claim for benefits
- 60-day period for claimant to appeal adverse benefit determination (or 180-day period in the case of a claim for health or disability benefits)

External Review

- Date by which a claimant must request an external review after receipt of an adverse benefit determination from a non-grandfathered health plan
- Date within which a claimant may respond (in the case of application of the federal external review rules, within four months of submitting request for the external review or 48-hour period following receipt of notice, if later) to request for information or materials needed to perfect the request for an external review

The Department of Health and Human Services has advised the Agencies of its intent to adopt a temporary policy of measured enforcement to extend similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants, beneficiaries and enrollees under applicable provisions of the Public Health Service Act.

Administration of the Extension

Effective May 4, 2020, the applicable deadlines are “tolled” during the period beginning on March 1, 2020 (*i.e.*, the start of the national emergency arising from the COVID-19 outbreak) until the date 60 days after the announced end of the national emergency or such other date as may be announced by the Agencies in a future notice (the “Outbreak Period”). In the event the end date for the Outbreak Period varies for different parts of the country, the Agencies have indicated that additional guidance will be issued regarding application of the extension.

For purposes of illustrating how the extensions are intended to work, the Agencies include a few basic examples using April 30, 2020 as the theoretical date for the end of the national emergency, which results in the Outbreak Period ending on June 29, 2020 (*i.e.*, 60 days after the end of the national emergency on April 30, 2020).

- Special Enrollment Period: Employee gives birth on March 31, 2020 and under the standard 30-day special enrollment period would have had until April 30, 2020 to request enrollment in the

employer's group health plan for the newborn (and herself, if not previously enrolled).

Pursuant to the extension provided under the notice, the employee instead has until July 29, 2020 (e., 30 days after the end of the Outbreak Period on June 29, 2020) to exercise her special enrollment right.

- Claims Period: Employer's medical plan provides that claims must be submitted within 365 days of the date the medical care is received. If a covered employee receives treatment for a medical condition on March 10, 2020, the last day for the employee to submit a claim for adjudication is June 29, 2021 (e., 365 days after the end of the Outbreak Period on June 29, 2020). Interestingly, the example provided by the Agencies appears to go beyond disregarding the Outbreak Period since the 365-day period is not simply extended by the duration of the Outbreak Period (e.g., 122 days); but rather the 365-day period is applied in its entirety following the end of the Outbreak Period. Consequently, it is unclear how the Agencies intend for the extension to apply to plans with a fixed calendar date by which claims must be submitted. Prompt guidance on this issue would be welcomed since March 31, 2020 was the end of the claims run-out period under many employers' calendar-year based health care reimbursement accounts and health care reimbursement arrangements.
- COBRA Election Period: Employee experiences a loss of coverage under the employer's group health plan due to a reduction in hours and is provided with a COBRA election notice on April 1, 2020. Traditionally, the employee would have until May 31, 2020 (e., 60 days after receipt of the COBRA election notice) to elect COBRA continuation coverage. However, the Agencies' notice extends the employee's COBRA election period through August 28, 2020 (i.e., 60 days after the end of the Outbreak Period on June 29, 2020).
- COBRA Premium Payments: A qualified beneficiary was receiving COBRA continuation coverage and timely paid the premium for his February 2020 coverage. As of July 1, 2020, the qualified beneficiary has not paid the applicable premium for March, April, May or June 2020 coverage. Since the Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely and the COBRA statute provides that premium payments are timely if made within 30 days from the date they are first due, the March, April, May and June premium payments will be considered timely if paid by July 29, 2020 (e., 30 days after the end of the Outbreak Period on June 29, 2020). If, however, by the July 29, 2020 deadline the qualified beneficiary has paid only two months of COBRA premiums, his COBRA continuation coverage would not extend beyond April 30, 2020.

Although not expressly addressed in the proffered examples, if the employee in the first COBRA example elects continuation coverage on August 28, 2020, which is after the end of the Outbreak Period, he would have until October 12, 2020 (*i.e.*, 45 days after the August 28, 2020 election) to make his initial COBRA premium payment and it appears that the health plan can require that such payment amount include the premiums for all the months of retroactive continuation coverage in order for plan coverage to extend through September 30, 2020. The premium payment for October continuation coverage would be subject to the standard COBRA rules and would be timely under the statutory 30-day grace period if paid by October 31, 2020.

In the example addressing COBRA premium payments, the Agencies expressly state that since the due dates for the qualified beneficiary's premiums would be postponed and the qualified beneficiary's premiums would be retroactive during the initial COBRA election period, the *"plan may not deny coverage, and may make retroactive payments for benefits and services received by the qualified beneficiary during this time"*. The language prohibiting the denial of coverage during the relief period could be interpreted as prohibiting a plan from denying the qualified beneficiary's claims for medical care received during the relief period even if the COBRA premiums have not yet been paid; however, the reference to the permissibility of retroactive payment suggests another equally plausible interpretation. Namely that the plan is prohibited from terminating an existing qualified beneficiary's COBRA continuation coverage due to nonpayment of premiums but that it may suspend the coverage for periods for which the COBRA premium has not been paid and to retroactively reinstate the COBRA coverage upon a timely payment for such COBRA coverage.

The notice raises a number of unanswered questions but what is clear from the examples is that individuals who take advantage of the extended special enrollment period or COBRA election period will find themselves in the unenviable position of facing several months of health care premiums in arrears. Nonetheless, the extension does afford individuals the benefit of significant hindsight in assessing whether to elect health care coverage. Unfortunately for employers, any relief provided by the relaxed COBRA notification deadlines does not by any stretch of the imagination offset the additional administrative procedures that must be implemented in order to effectively communicate and manage the extended deadlines, especially in light of the uncertainty of when this national emergency will officially end. In addition to determining how to address these changes on a going forward basis, employers will have to revisit any deadlines that had been previously applied or enforced after March 1, 2020 and are subject to the required extension.

RELATED PRACTICE AREAS

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- Employee Benefits & Executive Compensation

MEET THE TEAM



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