

Regulators Clarify COVID-19 Relief Deadline Extension

The Bottom Line

- *The newly issued Notice could be quite difficult to apply in practice for plan sponsors and third party administrators, as it requires a plan sponsor and its third party administrators to track each participant's or beneficiary's tolling period from the date he/she became entitled to relief under the 2020 Guidance and Notice.*
- *Plan sponsors should work with their ERISA counsel and their benefits administrators to develop procedures to track and communicate the individualized deadlines to participants and beneficiaries.*

Plan sponsors and administrators have been grappling with how to handle the possible expiration of the extension relief granted for certain deadlines applicable to group health plans under the "Joint Notice" published in May 2020 (the 2020 Guidance). With just two days to go before the 2020 Guidance was set to expire on February 28, 2021, the Department of Labor (DOL), in coordination with the Internal Revenue Service (IRS) and the Department of Health and Human Services (HHS) (collectively with the DOL, the Agencies), issued the [EBSA Disaster Relief Notice 2021-01](#) (the Notice), which clarified that the extension relief granted under the 2020 Guidance will extend past the February 28, 2021 statutory expiration date.

The 2020 Guidance

The 2020 Guidance provided for a period during which certain deadlines applicable to group health plans would be tolled during the "Outbreak Period" (i.e., the period from March 1, 2020 until 60 days after the announced end date of the COVID-19 national emergency). The deadlines include:

- HIPAA special enrollment periods,
- Elections under the Consolidated Omnibus Budget Reconciliation Act (COBRA),
- COBRA premium payments, Employer COBRA notice requirements, and
- Claims and external review procedures.

However, statutory language limits any such tolling period to a maximum of one year. Since the 2020 Guidance was effective on March 1, 2020, that one-year period was set to expire on February 28, 2021, meaning that the regular timelines would apply.

Since the COVID-19 national emergency is ongoing, absent additional guidance, plan sponsors were left to decide whether to continue to apply the extensions past the statutory deadline, or to revert to the regular timelines. In the 11th hour, the DOL released the Notice, which clarifies the 2020 Guidance and, in so doing, creates an administrative headache for plan sponsors and third party administrators.

The Notice

Specifically, the Notice requires a plan sponsor and administrator to track each participant's or beneficiary's tolling period from the date he/she became entitled to relief under the 2020 Guidance instead of having a uniform extension that applies to all participants and beneficiaries, meaning that for each individual, the tolling period will last until the earlier of:

1. One year from the date the individual was first eligible for relief, or
2. 60 days after the announced end of the COVID-19 national emergency.

Tracking these individualized tolling periods is an onerous task, which will require significant coordination between a plan sponsor and its various vendors (e.g., its third party and COBRA administrators) to ensure compliance. Plan sponsors should also work with their ERISA counsel on developing procedures to track and communicate these new deadlines to their participants and beneficiaries.

Examples of the Tolling Periods under the Notice

Some examples of how to determine the appropriate tolling period under the Notice are:

- If a qualified beneficiary's COBRA election period started March 1, 2020, the Notice tolls the election period until February 28, 2021, at which time the qualified beneficiary would have 60 days to make an election.
- If a qualified beneficiary's COBRA election period started October 1, 2020, the Notice tolls the election period until September 30, 2021 (unless the COVID-19 national emergency ended 60 days or more earlier), at which time the qualified beneficiary would have 60 days to make an election.
- If a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief under the Notice would end with respect to that notice or disclosure on February 28, 2021. The responsible plan fiduciary would be required to ensure that the notice or disclosure was furnished on or before March 1, 2021.

In all of these examples, the extension provided by the Notice does not exceed one year with respect to the applicable individual.

Additional Requirements

As if the Notice has not complicated plan administration enough with the individualized tolling periods, the Notice also requires plan sponsors and administrators to make reasonable accommodations to help prevent the loss of, or undue delay in payment of, benefits to affected individuals, including minimizing the possibility of a loss of benefits because of a failure to comply with the applicable timeframes. For example, the Notice provides that plan sponsors and/or plan administrators *should* consider affirmatively notifying participants and beneficiaries about the end of the relief period.

Furthermore, the Notice provides that notices a plan may have provided since the 2020 Guidance went into effect (e.g., COBRA election notices and claims procedure notices) may need to be reissued or amended if they did not provide accurate information regarding the time in which participants and beneficiaries were required to take action, suggesting that plan sponsors and administrators have a duty to include information about the tolling period in communications with participants and beneficiaries.

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