

>> COVID-19 ALERT

Group Health Plans: Regulators Extend Deadlines During the COVID-19 Crisis

THE BOTTOM LINE

- >> The Notice provides important guidance and relief for group health plan sponsors and plan participants in light of the COVID-19 pandemic.
- >> The regulators have hit the pause button on many of the employee benefit plan timeframes during the period of the COVID-crisis.
- >> Since the guidance is being provided only several weeks into the crisis, there may be a number of open issues plan sponsors need to contend with. Plan sponsors should stay apprised of developments in this area to ensure compliance and should consult employee benefits counsel to address any issues.

The Department of Labor (DOL) and the Internal Revenue Service (IRS) issued a **joint notice** on April 28, 2020 (the Notice) providing relief for certain deadlines applicable to group health plan participants and employers during the COVID-19 “Outbreak Period” (as defined in the Notice).

This relief impacts deadlines for:

- 1) Group health plan special enrollment periods;
- 2) Continuation health coverage (COBRA) elections, premium payments and employer COBRA notice requirements;
- 3) Group health plan claims procedures; and
- 4) Group health plan external review processes.

RELIEF PERIOD

The Notice provides that, for purposes of determining applicable deadlines, the period from March 1st until 60 days after the announced end date of the COVID national emergency (or such other date announced by the agencies in a future notice) must be disregarded. The Notice refers to this period as the “Outbreak Period”. As with everything else COVID-related, it is still unclear as to when the national emergency will end. If the emergency will end in different parts of the country at different times, additional guidance will be issued.

DEADLINES IMPACTED BY THE NOTICE

Special Enrollment Periods

Generally, group health plans must allow eligible individuals to enroll in the group health plan if enrollment is requested within 30 days (or 60 days in certain circumstances) of the occurrence of certain “change in status” events under Health Insurance Portability and Accountability Act (HIPAA), including birth, marriage, adoption of a child or loss of eligibility under another group health plan. The Notice extends the applicable special enrollment period by disregarding the Outbreak Period.

The Notice includes a number of examples demonstrating how the relief will apply, including the following, which is based on the assumption that the National Emergency ends on April 30, 2020:

Employee A is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Employee A gave birth and would like to enroll herself and the child into her employer's plan. When may Employee A exercise her special enrollment rights? The Notice provides that the Outbreak Period is disregarded for purposes of determining the Employee's special enrollment period. As a result, Employee 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 that she pays the premiums for any period of coverage.

Because the Outbreak Period begins March 1, 2020, an individual with a qualifying event in February may still be eligible for special enrollment after the Outbreak Period.

COBRA Timeframes

The Notice extends the following COBRA timeframes by disregarding the Outbreak Period:

- >> 60-day election period for COBRA continuation coverage.
- >> Applicable date for making COBRA premium payments.

- >> Date for group health plan sponsors to provide participants with a COBRA election notice.

As plan administrators know, the COBRA timing requirements can be complicated in practice. Disregarding the Outbreak Period will add further complexities to COBRA administration. As a general matter, we believe employers should not delay providing participants with COBRA election notices unless they are forced to delay because of business disruption caused by the pandemic.

Claims Procedures

Most group health plans are required to maintain a procedure governing the disposition of benefit claims, and to provide claimants with a reasonable opportunity to appeal an adverse benefit determination. Under the Notice, for purposes of determining the date within which individuals may file a benefit claim or appeal a benefit determination under the plan's claims procedure, the Outbreak Period must be disregarded. As the existing deadlines for employers to respond to initial benefit claims and appeals are not specifically extended, employers should adhere to these deadlines.

External Review of Certain Claims

The Affordable Care Act requires many group health plans to offer an external review of adverse benefit determinations. The Notice extends the date within which claimants may file a request for external review, as

well as the date for filing additional information to perfect the request.

The Notice does not address certain related employee benefit plan administration issues, including whether plan sponsors are required to notify participants about the new deadlines and whether and how COBRA notices and other forms (or plan documents) may need to be revised. Additionally, complications may surface when the extended deadlines arise in the context of employees on furlough or leave.

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