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### Agencies extend timeframes for HIPAA, COBRA and claims actions

The DOL and Department of Treasury have provided relief to group health plans, disability and other welfare benefit plans, pension plans and their participants and beneficiaries who have been affected by COVID-19 by extending certain timeframes that otherwise would apply to them.

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#### Authors

Leslye Laderman, JD, LLM  
Richard Stover, FSA,  
MAAA

#### Background

On April 29, the IRS and the DOL's Employee Benefit Security Administration (the "agencies") offered some relief to individuals and employers affected by COVID-19 who may be unable to satisfy certain timeframes that impact their rights and responsibilities under various employee benefit plans. Under the [relief](#), the period between March 1, 2020 and a yet-to-be-determined date (the "Outbreak Period") must be disregarded in calculating the timeframes that apply HIPAA special enrollment periods, COBRA elections and premium payments, and the filing and appeal of benefit claims.

Prefatory material to relief notes that although the Department of Health & Human Services did not issue the rule, it had advised the agencies that it concurs with the specified relief and will adopt a temporary policy of measured enforcement to extend similar timeframes otherwise applicable to non-federal governmental group health plans. It will also encourage plan sponsors to operate in a manner consistent with the relief. The DOL also released [FAQs](#) for participants and beneficiaries.

#### What is the Outbreak Period?

The "Outbreak Period" began on March 1, 2020 and will end 60 days after the announced date of the end of the national emergency related to COVID-19 or such other date announced by EBSA and IRS. Thus, the end date of the period is currently unknown.

#### Extension of timeframes

The relief extends the timeframes for the following actions:

- The 30-day or 60-day period (as applicable) for requesting a HIPAA special enrollment in a group health plan
- The 60-day period to elect COBRA continuation coverage
- The date for making COBRA premium payments
- The date for an individual to notify the plan of a qualifying event or determination of disability
- The date within which an individual may file a benefit claim under the plan's claims procedure
- The date within which a claimant may file an appeal of an adverse benefit determination under the plan's claims procedure
- The date within which a claimant may file a request for an external review after receiving an adverse benefit determination or final internal adverse benefit determination of a claim subject to external review
- The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete

In addition, the Outbreak Period is disregarded when determining the date by which a group health plan must provide a COBRA election notice.

The final rules contain examples to illustrate how the relief works using an assumed Outbreak Period starting on March 1, 2020 and ending on June 29, 2020 (60 days after an assumed national emergency end date of April 30, 2020). These examples set out the following principles:

**If the event that triggers the obligation to act occurs during the Outbreak Period, the timeframe for taking the action does not begin until the day after the Outbreak Period ends.**

Thus, an employee who previously declined group health plan coverage and gave birth on March 31, 2020 would have until July 29, 2020 (30 days after the end of the assumed Outbreak Period) in which to request special enrollment for herself and her child. Similarly, if a qualified beneficiary who had a reduction in hours qualifying event receives a COBRA election notice on April 1, 2020, the 60-day period for electing COBRA coverage would not end until August 28, 2020, 60 days after the end of the assumed Outbreak Period.

This principle also applies to actions required under a plan's claims procedures. For example, if a plan requires that claims be submitted within 365 days of treatment, and an individual receives treatment during the Outbreak Period, the 365-day claims submission period will not begin until the end of the Outbreak Period. Similarly, a claimant who received a notice of an adverse benefit determination from a pension plan during the Outbreak Period would have 60 days from the end of the Outbreak Period in which to file an appeal.

**Buck comment.** The rules regarding the extension of timeframes for submitting claims also apply to health flexible spending accounts and health reimbursement arrangements because they are group health plans subject to ERISA. Thus, plans may have to reimburse claims submitted after a

plan's claims submission deadline if that deadline falls within the Outbreak Period. However, it is not clear whether the rules apply to dependent care assistance plan claims because these plans are not subject to ERISA.

**If the timeframe for taking action began before the beginning of the Outbreak Period (i.e., before March 1, 2020), the entire Outbreak Period is disregarded in determining the deadline date.** The rules include an example of an individual who received a notice of adverse benefit determination from a disability plan on January 28, 2020. The plan required that an appeal be submitted within 180 days of a claim denial. The example states that the claimant would have 148 days (180 days less the 32 days between January 28 and March 1, 2020) following the end of the Outbreak Period in which to submit an appeal.

**Buck comment.** Some individuals whose deadline for taking action ended during the Outbreak Period may have had their request for special enrollment, COBRA election, premium payment, or claim/appeal submission previously rejected as untimely. Because of the extension, these actions would now be deemed timely. Employers will have to consult with their third-party administrators or insurers on how to address in a timely manner.

**An employee or qualified beneficiary may be required to pay for any coverage that first becomes effective, or is continued, during the Outbreak Period.** The example regarding special enrollment notes that if the employee makes a timely request for special enrollment after the end of the Outbreak Period, coverage may be retroactive to the date of birth, provided the employee pays for coverage.

The relief also includes an example involving the payment of COBRA premiums and the application of the 30-day payment grace period. The example states that a qualified beneficiary who had made a timely payment for February 2020 would have until 30 days after the end of the assumed Outbreak Period (i.e., until July 29, 2020) in which to make premium payments for March, April, May, and June 2020. It also states that any payments received would be credited to premiums due for the earliest period of coverage and thus if only two months' premiums were received by July 29, 2020, the qualified beneficiary would only have COBRA coverage for March 2020 and April 2020.

**Buck comment.** The agencies note that where premium payment due dates have been postponed and subsequent payments are applied to retroactive periods of coverage, the plan may not deny coverage and may make retroactive payments for benefits and services received during that period.

## In closing

Employers should confirm that their plan vendors will properly administer these extensions. As discussed above, the most pressing task will be to identify individuals whose special enrollment requests, COBRA elections and premium payments, or claims and appeals were rejected as untimely on or after March 1, 2020 because their actions may now be timely under the new extension rules.

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