

# Benefit Plan Deadlines Extended – COBRA, Special Enrollment, Plan Disclosures and More

## Labor & Employment Law Update

By Kelly Haab-Tallitsch on May 11, 2020

On April 29, 2020, the Department of Labor (DOL) and the Treasury Department issued guidance extending certain timeframes related to employee benefit plans due to the COVID-19 outbreak. The agencies acknowledge that plan sponsors, participants and beneficiaries may have difficulty meeting the standard timeframes due to the national emergency and the extensions are intended to help maintain group health plan coverage.

### Relief for Participants and Beneficiaries

A joint final rule issued by the DOL and Treasury provides that all group health plans, disability plans, other employee welfare benefit plans subject to the Employee Retirement Income Security Act (ERISA) must disregard the period from March 1, 2020 until 60 days after the COVID-19 National Emergency ends (or such other date as the agencies announce), referred to as the “Outbreak Period,” in determining certain notice and payment deadlines.

This includes:

- The 60-day COBRA election period;
- Due dates for making COBRA premium payments;
- The 30-day (or 60-day as applicable) HIPAA special enrollment period;
- The 60-day period for participants to notify a plan of a COBRA qualifying event (e.g. divorce); and
- The deadlines for filing a claim for benefits, an appeal, or a request for an external review of a denied claim.

The final rule provides examples of how these extensions work in practice, based on the assumption that the National Emergency ended on April 30, with the Outbreak Period ending on June 29 (60 days after the end of the National Emergency).

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- **Electing COBRA** – Individual A experiences a qualifying event for COBRA purposes as a result of a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements. Individual A is provided a COBRA election notice on April 1, 2020. The Outbreak Period is disregarded for purposes of determining Individual A's COBRA election period. The last day of Individual A's COBRA election period is 60 days after June 29, 2020, which would be August 28, 2020.
- **Special Enrollment** – On March 31, 2020, Individual B gave birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15. The Outbreak Period is disregarded for purposes of determining Individual B's special enrollment period. Individual B 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.
- **COBRA Premium Payments** – On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. Monthly premium payments are due by the first of the month. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Individual C has made no premium payments for March, April, May, or June. Does Individual C lose COBRA coverage, and if so for which month(s)? Under the terms of the COBRA statute, premium payments are timely if made within 30 days from the date they are first due. In calculating the 30-day period, however, the Outbreak Period is disregarded, and payments for March, April, May, and June are all deemed to be timely if they are made within 30 days after the end of the Outbreak Period. Accordingly, premium payments for four months (i.e., March, April, May, and June) are all due by July 29, 2020. Individual C is entitled to COBRA continuation coverage for these months if she timely makes payment. Individual C is eligible to receive coverage under the terms of the plan during this interim period even though some or all of Individual C's premium payments may not be received until July 29, 2020.

### Relief for Plan Sponsors

The joint final rule also states the Outbreak Period shall be disregarded when determining the date for providing a COBRA election notice. This provides additional time (if needed) for employers to notify qualified beneficiaries of their rights to elect COBRA continuation coverage.

Additionally, the DOL's Employee Benefits Security Administration (EBSA) issued EBSA Disaster Relief Notice 2020-01 allowing additional time for plan sponsors to furnish benefit statements, annual funding notices, and other required notices and disclosures required under the Employee Retirement Income Security Act (ERISA). The notice provides that an employee benefit plan will not violate ERISA for a failure to timely distribute a notice, disclosure, or document due during the

Outbreak Period, as long as the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. This includes Summary Plan Descriptions, Summaries of Material Modifications, benefit determinations, annual funding notices, periodic benefit statements, summary annual reports, participant fee disclosures, QDIA notices, and blackout notices.

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