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DOL Issues COVID-19 Relief via Certain Notice Extensions for Employee Benefit Plans

On April 28, 2020, the Department of Labor and Department of Treasury (the Departments) announced a final rule providing an extension of timeframes in its “Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak” notice. In addition to the final rule, the DOL also released EBSA Disaster Relief Notice 2020-01 and Frequently Asked Questions, providing additional guidance and relief for employee benefit plans. Recognizing the potential difficulties for group health plans to comply with certain notice obligations due to the COVID-19 public health crisis, and in effort to minimize the possibility of individuals losing benefits due to a failure to timely meet requirements, the Departments have extended certain timeframes for group health plans, disability and other welfare plans, and pension plans.

The relief provides that all group health plans, disability and other employee welfare benefit plans, and employee pension plans subject to ERISA or the Code must disregard the period from March 1, 2020 until 60 days after the end of the National Emergency (known as the “Outbreak Period”) for certain deadlines, including:

- The 30-day (or 60-day, if applicable) deadline to request a special enrollment under HIPAA;
- The 60-day COBRA election period;
- The 30-day (or 60-day, if applicable) deadline to notify the plan of a COBRA qualifying event (and the 60-day deadline for individuals to notify the plan of a determination of a disability);
- The 14-day deadline for plan administrators to furnish COBRA election notices;
- The 45-day deadline for participants to make a first COBRA premium payment and 30-day deadline for subsequent COBRA premium payments;
- Deadlines for individuals to file claims for benefits, for initial disposition of claims, and for providing claimants a reasonable opportunity to appeal adverse benefit determinations under ERISA plans and non-grandfathered group health plans; and
- Deadlines for providing a state or federal external review process following exhaustion of the plan’s internal appeals procedures for non-grandfathered group health plans.

The above are the extended deadlines impacting group health plans. To better understand the application of the extended timeframes, the Notice provides examples, some of which are included below. Note that the examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending on June 29, 2020 (60 days after the end of the National Emergency):

Electing COBRA. Individual A works for Employer X and participates in X’s group health plan. Due to the National Emergency, 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 and has no other coverage. Individual A is provided a COBRA election notice on April 1, 2020. What is the deadline for A to elect COBRA?

Conclusion. In Example 1, Individual A is eligible to elect COBRA coverage under Employer X’s plan.

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 is August 28, 2020.

HIPAA Special Enrollment Period. Individual B is eligible for, but previously declined participation in, her employer-sponsored group health plan. 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. When may Individual B exercise her special enrollment rights?

Conclusion. In Example 2, the Outbreak Period is disregarded for purposes of determining Individual B's special enrollment period. Individual B and her child qualify for special enrollment into her employer's plan as early as the date of the child's birth. 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, provided that she pays the premiums for any period of coverage.

COBRA Premium Payments. On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since Individual C had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. 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)?

Conclusion. In this Example 3, the Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. Premium payments made by 30 days after June 29, 2020, which is July 29, 2020, for March, April, May, and June 2020, are timely, and Individual C is entitled to COBRA continuation coverage for these months if she timely makes payment. 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, premium payments for four months (i.e., March, April, May, and June) are all due by July 29, 2020. 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. Since the due dates for Individual C's premiums would be postponed and Individual C's payment for premiums would be retroactive during the initial COBRA election period, Individual C's insurer or plan may not deny coverage, and may make retroactive payments for benefits and services received by the participant during this time.

Claims for Medical Treatment under a Group Health Plan. Individual D is a participant in a group health plan. On March 1, 2020, Individual D received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Was Individual D's claim timely?

Conclusion. Yes. For purposes of determining the 365-day period applicable to Individual D's claim, the Outbreak Period is disregarded. Therefore, Individual D's last day to submit a claim is 365 days after June 29, 2020, which is June 29, 2021, so Individual D's claim was timely.

In addition, there is relief for group health plans in furnishing participant notices. More specifically, plans and responsible plan fiduciaries will not be treated as having violated ERISA if they act in good faith and furnish any notices, disclosures, or documents that would otherwise have to be furnished during the outbreak period (including those requested in writing by a participant or beneficiary) "as soon as administratively practicable under the circumstances." Here, it's important to note that acting in good faith includes sending documents electronically as long as the employer believes employees have effective access to electronic means of communications.

Further, deadlines for certain filing obligations – including Form 5500 filings for certain plans – are also extended. For group health plans with Form 5500 filings due April 1, 2020 through July 15, 2020 (i.e., group health plans with plan years ending in September, October, and November 2019), the IRS has extended the filing due date to July 15, 2020. In addition, this extension applies to group health plans with a deadline within April 1, 2020 through July 15, 2020 due to a previously filed extension. This extension is automatic. The same applies for retirement plans with similar Form 5500 filing due dates, and for Form M-1 filings. While the automatic extension DOES NOT APPLY to calendar-year plans, such plans can receive a two-and-a-half-month extension by filing Form 5558.

Employers should be aware of these developments and confirm with any vendors and administrators, as applicable, that the specified timelines are being administered in accordance with the DOL's guidance.

Resources:

- [DOL News Release](#)
- [Notice \(Final Rule\)](#)
- [EBSA Disaster Relief Notice 2020-01](#)
- [Frequently Asked Questions](#)

This information has been provided as an informational resource for NFP clients and business partners. It is intended to provide general guidance, and is not intended to address specific risk scenarios. Regarding insurance coverage questions, each specific policy must be reviewed in its entirety to determine the extent, if any, of coverage available for the impact of the Coronavirus. If you have questions, please reach out to your NFP contact.