



Presents:

SPECIAL ENROLLMENT RIGHTS AND COBRA ISSUES DURING COVID-19

Introduction



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Outbreak Period Temporary Rule

- On May 4, 2020 the IRS and the DOL published a Notice of temporary rules extending certain deadlines under ERISA and the Internal Revenue Code applicable to retirement plans, group health plans, and other welfare plans during the COVID-19 national emergency period; see <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>.
- The temporary rule requires all self-funded and insured ERISA group health plans to disregard the “Outbreak Period” in measuring notice and election deadlines. The “Outbreak Period” is the period from **March 1, 2020** until 60 days after the announced end of the COVID-19 national emergency under the Stafford Act (or such other date announced in a future notice).



COBRA, Special Enrollment and Claims Deadlines Affected:

- With respect to group health plans, and their sponsors and administrators, the date for providing a COBRA election notice
- The 60-day election period for COBRA continuation coverage
- The date for making COBRA premium payments
- The date for individuals to notify the plan of a qualifying event or determination of disability under COBRA
- The 30-day period (or 60-day period, if applicable) to request special enrollment under ERISA as a result of marriage, birth, adoption or loss of other health plan coverage



COBRA, Special Enrollment and Claims Deadlines Affected (continued):

- The date within which individuals may file a benefit claim under the plan's claims procedures
- The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure
- The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination
- 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

The Outbreak Period remains open – in the context of COBRA coverage, the following are questions for employers to consider:

- The Notice does not require employers to notify employees of the temporary rules. Should employers do so? Is there any liability for failing to do so?
- Should an employer give the COBRA Notice concurrent with the COBRA event, regardless of the relief under the temporary rule?
- If an employer does give a terminated employee a COBRA Notice and the employee makes the election, what is the deadline for the payment of premiums?
- For a fully-insured, experience-rated employer, what effect will the temporary rule have on the 2021 renewal? Actual COBRA experience may not actually be known (likely will not be known for a 01/01/2021 renewal).
- Are insurance carriers pending claims until COBRA premiums are paid? If not and premiums are not paid, what will happen? How will those claims affect the employer's experience?

Public Notice on our Website

Harvard Pilgrim is taking measures to allow for the extended deadlines affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims.

- According to the federal guidance, the national emergency due to the COVID-19 outbreak began on March 1, 2020. At that point, timelines associated with COBRA, making enrollment changes due to qualifying events, submitting and appealing claims, and external claims review were paused. Those timelines will resume 60 days after the federal government announces that the national emergency is over.
- The following examples show how the DOL/IRS order would affect certain timelines.
- They assume the national emergency ends on June 30, which means that timelines would resume 60 days later, on August 29. The federal government has not yet announced the end of the national emergency.
- Employers should consult with their attorneys to determine the appropriate timing requirements and COBRA compliance under their plans.



COBRA Election:



- Individuals have 60 days to elect COBRA from the date they receive an election notice from their employer.
- If an employee lost group coverage and received a COBRA election notice on March 1, 2020, for example, they would normally have 60 days from the March 1 date to elect COBRA.
- If the national emergency ends on June 30, the 60-day COBRA election timeline would resume on August 29. From there, the employee would then have 60 days (until October 28) to elect COBRA.

Initial COBRA premium payment

- Individuals have 45 days to pay initial COBRA premiums.
- If initial premiums were due during the national emergency and it was declared over on June 30, individuals would have 45 days from August 29 (until October 13) to pay the initial COBRA premium.

Current COBRA premium payment

- Individuals currently on COBRA have 30 days to pay their premiums.
- If they made timely payments in February and March but did not make premium payments in April, May, June or July, they would have 30 days from August 29 (until September 28) to make their past-due premium payments.



Special Enrollment Periods:



HIPAA Special Enrollment Periods

- Members have 30 days to notify us about qualifying events (e.g., marriage, birth or adoption of a child, loss of employer-sponsored health insurance) for off-anniversary health plan changes.
- If the national emergency ends on June 30, employees would have 30 days from August 29 (until September 28) to notify Harvard Pilgrim about a qualifying event.

Employer Special Enrollment Periods

- Harvard Pilgrim will allow these employers a one-time special enrollment period during the employer's current plan year and until the announced end of the national emergency.
- New plan elections will be limited only to less-rich plan designs or "buy downs" (e.g., the employer's current plan with a higher deductible)
- Employers who want to offer a special enrollment period must notify Harvard Pilgrim 10 days in advance
- The special enrollment period must be only for 30 days





Thank You!

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