

DOL Requires Employee Benefit Plans to Offer Extensions of Plan-Related Deadlines

On May 4, 2020, the U.S. Department of Labor's *Employee Benefits Security Administration* (EBSA) released additional COVID-19 related regulations specifically addressing deadline relief for employee benefit plans, plan participants, and plan beneficiaries. The regulation aims to help those covered by employee benefit plans and impacted by the coronavirus outbreak.

The regulation – entitled “Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID–19 Outbreak” – was jointly issued by the DOL and the IRS and extends certain plan time frames affecting participants’ rights regarding plan portability and continuation of group health plan coverage under COBRA. It also extends the time for plan participants to file or perfect benefit claims or appeals of denied claims. These extensions provide plan participants additional time to make important health coverage and other decisions affecting their benefits during the coronavirus outbreak.

The DOL and IRS believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in employee benefit plans during the National Emergency. To accomplish this, the regulation is effective beginning March 1, 2020 and continues to be in effect until 60 days after the announced end of the National Emergency or such other date announced in future guidance. This time period is known as the “Outbreak Period” in the regulation. It should be noted that the National Emergency is the COVID-19 emergency period dictated by the President of the United States and should not be confused with the federal Public Health Emergency period which is determined by the Secretary of Health and Human Services. To the extent there are different outbreak period end dates for different parts of the country, the Department will issue additional guidance regarding the application of the relief for those different areas.

Relief for Employee Benefit Plan Sponsors Due to the COVID-19 Outbreak

Similarly, EBSA released separate guidance providing an extension of deadlines to plan fiduciaries and plan sponsors for furnishing required notices or disclosures to plan participants, beneficiaries, and other persons during the COVID-19 outbreak. (EBSA Disaster Relief Notice 2020-01.) This extension applies to the furnishing of notices, disclosures, and other documents required by ERISA. Per the regulations, an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

Regulations Applicable to Both ERISA and Non-ERISA Plans

While the Extension Regulations themselves apply directly to ERISA-governed health plans, the Department of Health and Human Services has advised that it will exercise enforcement discretion by adopting a temporary policy of measured enforcement to extend similar

timeframes otherwise applicable to non-ERISA group health plans and their participants, beneficiaries and enrollees under applicable provisions of the Public Health Service Act.

Employee welfare benefit plans, including group health and disability plans, and employee pension benefit plans subject to ERISA or the Internal Revenue Code must *disregard* (in other words, not count) the period of time during the Outbreak Period when determining the time frame for action or decision regarding the following group health plan events:

1. The date for enrolling under a health plan's special enrollment provisions.
2. The 60-day period for electing COBRA continuation coverage.
3. The date for making COBRA continuation coverage premium payments.
4. The date for individuals to notify a health plan of a qualifying event or determination of disability.
5. The date for filing a benefit claim in accordance with the plan's claims procedures.
6. The date within which claimants may file an appeal of an adverse benefit determination (claim denial) in accordance with the plan's claims procedures.
7. The date within which claimants may file a request for an external review; and
8. The date a group health plan sponsor or administrator must provide a COBRA election notice.

By disregarding the Outbreak Period when determining the time frame for action on these events, plan participants and beneficiaries are afforded an extension of time directly related to the COVID-19 pandemic. Rather than extending each particular event, the regulation requires that the balance of any time owed a plan participant to act or make a decision on any applicable event that falls within the Outbreak Period must be credited to the plan participant at the end of the Outbreak Period (60 days after the announced end of the National Emergency). **Please carefully review the examples provided at the end of this summary.** They illustrate how the extension (or deferral) of time works under the new regulations. The calculations in the three examples that follow can be similarly applied to all of the events listed above and subject to the Extension Regulations.

Plan Amendments and Forms

The Extension Regulations and related FAQs do not address whether plans must be amended to comply with the mandates. While some plans include general language stating that the plan will comply with all applicable laws and regulations, such language may not be sufficient when it comes to a plan sponsor's obligation to provide information to plan participants on how to file claims or manage their benefits under the plan. This same logic goes for updating any forms that are used in the events affected by the Extension Regulations. Until additional guidance is released, MedBen suggests providing plan participants with a general amendment that can be used to meet the mandate as well as notify plan participants of these extended deadlines. In addition, a general statement regarding the extensions might be made in the header of certain forms that can easily be updated – or internal e-mails or payroll stuffers might be sufficient to notify plan participants of the additional time to act.

Effect on Stop-Loss Policies

As with many health plan related laws and regulations, the Extension Regulations do not apply to stop-loss policies – which means it will be up to the plan sponsor's stop-loss carrier to allow

the same extension deadlines to apply under the stop-loss policy. No doubt, different stop-loss carriers will take different approaches to plan sponsor compliance with these new mandates. In some cases, stop-loss claims must be processed and filed within certain time frames described in the stop-loss policy which now might not be met given the plan's requirement to allow plan participants additional time to act. In some cases, claims and elections for coverage could extend beyond the end of the stop-loss contract period. MedBen will be working with the stop-loss carriers utilized by our clients to determine how to best mitigate confusion and maintain stop-loss coverage for affected claims.

Extension of Time Frame Examples

To understand the following examples, assume that the National Emergency ended April 30, 2020. (It did not end on that day, but the Extension Regulations use this date to illustrate how the extensions will work.) If the National Emergency ended April 30, 2020, 60 days from that date is June 29, 2020. Given this assumption, the Outbreak Period would run from March 1, 2020 through June 29, 2020. ***Important Note: Plan participants are not required to wait until the end of the extended deadline to act (i.e., enroll, elect COBRA, or appeal a claim). These rules just give them the flexibility to do so if they want or need the extra time. In many cases, plan participants will want to act immediately within the standard time frames described in the plan.***

Special Enrollment Period Examples

Under HIPAA, employees have either 30-day or 60-day special enrollment periods to request enrollment in the health plan based on certain events. For a 30-day special enrollment period, the following examples illustrate how the extension works.

Special Enrollment Example One:

- The employee originally waived coverage under the health plan.
- On March 15, 2020, the employee gives birth and would like to enroll in the plan along with her newborn child.
- March 15, 2020 is after the March 1, 2020 effective date of the Extension Regulations, so the entire special enrollment period is put on hold until the end of the Outbreak Period.

Special Enrollment Extension Calculation (Example One):

- The employee's 30-day special enrollment period is extended by disregarding (not counting) any of the days during the entire Outbreak Period.
- Assuming that the National Emergency ends April 30, 2020, and therefore the Outbreak Period ends June 29, 2020, the employee has 30 days from the end of the Outbreak Period (June 29, 2020) to enroll herself and her child in the plan.
- The employee's special enrollment election period ends July 29, 2020.

Special Enrollment Example Two:

- The employee originally waived coverage under the health plan.
- On February 20, 2020, the employee gives birth and would like to enroll in the plan along with her newborn child.

- February 20, 2020 is before the March 1, 2020 effective date of the Extension Regulations so only the days during the Outbreak Period are put on hold until the end of the Outbreak Period.

Special Enrollment Extension Calculation (Example Two):

- The employee's 30-day special enrollment period is extended by disregarding (not counting) only those days during the Outbreak Period.
- Because the special enrollment period began before the March 1, 2020 effective date, the nine (9) days in February count against the special enrollment period election time frame.
- The health plan will not start counting the remaining twenty-one (21) days of the special enrollment election time frame until the end of the Outbreak Period (June 29, 2020).
- The employee's special enrollment election period ends July 20, 2020 (21 days after June 29, 2020).

COBRA Election Period Examples

Under COBRA, employees and dependents who lose active coverage due to a qualifying event (for example, termination of employment or reduction of hours) have 60 days from the date the individual receives the COBRA election notice to elect COBRA coverage.

COBRA Election Period Example One:

- The employee's hours are reduced causing the employee to lose active coverage under the health plan, which is a COBRA qualifying event.
- The employee receives the COBRA election notice on April 1, 2020.
- April 1, 2020 is after the March 1, 2020 effective date of the Extension Regulations, so the entire COBRA election period is put on hold until the end of the Outbreak Period.

COBRA Election Period Calculation (Example One):

- The employee's 60-day COBRA election period is extended by disregarding (not counting) the entire Outbreak Period.
- Assuming the National Emergency ends April 30, 2020, and therefore the Outbreak Period ends June 29, 2020, the employee has 60 days from the end of the Outbreak Period (June 29, 2020) to elect COBRA.
- The employee would have until August 28, 2020 to elect COBRA.

COBRA Election Period Calculation Example Two:

- The employee's hours are reduced causing the employee to lose active coverage under the health plan, which is a COBRA qualifying event.
- The employee receives the COBRA election notice on February 1, 2020.
- February 1, 2020 is before the March 1, 2020 effective date of the Extension Regulations, so only those days during the Outbreak Period are put on hold until the end of the Outbreak Period.

COBRA Election Period Calculation (Example Two):

- The employee's 60-day COBRA election period is extended by disregarding (not counting) only those days during the Outbreak Period.

- Because the COBRA election period began before the March 1, 2020 effective date, the twenty-eight (28) days in February count against the 60-day COBRA election period time frame.
- The remaining thirty-two (32) days of the COBRA election period time frame will not be counted until the end of the Outbreak Period (June 29, 2020).
- The employee's COBRA election period ends July 31, 2020 (32 days after June 29, 2020).

Adverse Benefit Determination Appeal Filing Deadline Examples

ERISA, and many group health plans, include specific deadlines for the appeal of denied claims. Among these deadlines is the 180-day timeframe to appeal an adverse benefit determination under a group health plan.

Appeal Filing Deadline Example One:

- The employee receives notice of a denied health benefit claim (an adverse benefit determination explanation of benefits) on April 15, 2020.
- April 15, 2020 is after the March 1, 2020 effective date of the Extension Regulations, so the entire 180-day appeal time period is put on hold until the end of the Outbreak Period.

Appeal Filing Deadline Calculation (Example One):

- The employee's 180-day appeal time period is extended by disregarding (not counting) the days during the entire Outbreak Period.
- Assuming the National Emergency ends April 30, 2020, and therefore the Outbreak Period ends June 29, 2020, the employee has 180 days from the end of the Outbreak Period (June 29, 2020) to appeal the denied claim.
- The employee would have until December 26, 2020 to appeal the denied claim.

Appeal Filing Deadline Example Two:

- The employee receives notice of a denied benefit claim (an adverse benefit determination explanation of benefits) on January 28, 2020.
- January 28, 2020 is before the March 1, 2020 effective date of the Extension Regulations, so only those days during the Outbreak Period are put on hold until the end of the Outbreak Period.

Appeal Filing Deadline Calculation (Example Two):

- The employee's 180-day appeal filing time period is extended by disregarding (not counting) only those days during the Outbreak Period.
- Because the appeal filing time period began before the March 1, 2020 effective date, the thirty-two (32) days before March 1, 2020 count against the 180-day appeal filing deadline period.
- The remaining 148 days of the appeal deadline period (180 minus 32) will not be counted until the end of the Outbreak Period (June 29, 2020).
- The employee would have until November 24, 2020 to appeal the denied claim (148 days from June 29, 2020).