

Publications

Deadline Extensions and COBRA Update

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CLIENT ALERT | 5.8.2020

Coronavirus Related Deadline Extensions

The Department of Labor (DOL) and Internal Revenue Service (IRS) recently issued a Joint Notice extending the time frames for a wide range of group health plan participant related events, including the deadlines for:

- employers, participants and beneficiaries to provide the plan with notice of an event that triggers a right to COBRA continuation coverage (or for a disability extension)
- plans to distribute COBRA notices
- eligible qualified beneficiaries to elect COBRA continuation coverage
- qualified beneficiaries to make premium payments
- mid-year enrollment election changes triggered by marriage, birth, adoption, placement for adoption or a loss of other health insurance coverage
- filing benefit claims, appeals and requests for external review

The Joint Notice states that the time period from March 1, 2020 until 60 days following the end of the COVID-19 national emergency (the "Outbreak Period") is disregarded. To the extent that a timeframe started before the Outbreak Period and expires within the Outbreak Period, this will result in the tolling of the time frame. If a time frame starts within the Outbreak Period, the time frame will begin on the day following the Outbreak Period.

For example, under COBRA, a qualified beneficiary must be provided with at least 60 days to elect COBRA continuation coverage. If a qualified beneficiary is provided with a COBRA election notice on April 1, 2020, their election period will be tolled until the end of the Outbreak Period. At that time, the qualified beneficiary will have a full 60 days to elect COBRA continuation coverage (120 days from the end of the COVID-19 national emergency). The qualified beneficiary then has 45 days from the date of his/her COBRA election to make his/her initial

COBRA premium payment for all of the premiums that accrued between the loss of coverage date and the premium payment date. Note, if the qualified beneficiary elects COBRA during the Outbreak Period, the qualified beneficiary would have 45 days after the end of the Outbreak Period to make the COBRA premium payments. Once continuation coverage is elected and the COBRA premiums paid, coverage will be retroactive to the date of the loss of coverage.

Qualified beneficiaries who currently have COBRA continuation coverage cannot have their coverage retroactively terminated for failure to make premium payments until the end of the Outbreak Period plus the grace period (although the plan can generally “pend” the claim and delay claim determinations until either the premium is paid or the payment grace period ends).

The Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. COBRA premiums that would normally have been payable during the Outbreak Period are not due until 30 days (or longer as provided in the plan) after the end of the Outbreak Period (e.g., 90 days after the end of the COVID-19 national emergency). If the COBRA premiums are paid by that date, any claims that were pended during the Outbreak Period would need to be covered.

If the qualified beneficiary pays only part of the accrued COBRA premiums, those premiums are applied to the earliest missed COBRA premium and COBRA coverage would be retroactively terminated for a failure to pay the premium with respect to the later months for which the premium remains unpaid at the end of the extended payment period.

Although this deadline extension is not reflected in the DOL’s Model COBRA Notice, the employer should provide notice of this deadline extension to participants and beneficiaries. Notification could be made through a benefits website, newsletters or other communications.

New Model Notices

On Friday, May 1, 2020, the DOL issued new [model general and election notices](#) employers may use to satisfy the notice requirements under COBRA. The newly released notices add a new provision regarding the interaction of COBRA and Medicare coverage.

The new provision addresses enrolling in Medicare in lieu of electing COBRA continuation coverage. The new provision explains that participants who are still employed when they first become eligible for Medicare may elect Medicare coverage immediately or wait to enroll during an eight-month special enrollment period. This period begins on the earlier of the month after the participant’s employment terminates or the month his or her employer-provided group health coverage terminates. Individuals deciding to enroll in Medicare later may face a penalty or gap in coverage. The new provision advises qualified beneficiaries that, if they elect COBRA continuation coverage and then enroll in Medicare, they may lose COBRA continuation coverage. However, COBRA continuation coverage will not be lost if a qualified beneficiary enrolls in Medicare before electing COBRA continuation coverage. If a qualified beneficiary elects Medicare before electing COBRA continuation coverage (and so has both Medicare and COBRA continuation coverage), the new provision explains that Medicare will be the primary payer.

The new model notices do not address the extension of time to elect COBRA continuation coverage following the “Outbreak Period” (discussed above).

An ongoing flurry of class action litigation across the country has focused on deficiencies in COBRA election notices. Potential liability may stem from a COBRA notice's failure to include all required regulatory elements, and the regulatory requirement that notices be able to be understood by the average plan participant. Because employers retain liability for COBRA compliance even if a third-party vendor is hired for COBRA administration, employers should have their COBRA notices regularly reviewed—even those based on the model notices—to ensure compliance with the DOL's regulations.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.